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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

BEFORE THE HONORABLE EDWARD M. CHEN, JUDGE

IN RE TESLA, INC. SECURITIES
LITIGATION.

)
) No. 18-cv-04865-EMC
)

San Francisco, California
Wednesday, February 1, 2023

TRANSCRIPT OF TRIAL PROCEEDINGS

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(Appearances continued, next page)

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Wednesday, February 1, 2023

8:12 a.m.

P R O C E E D I N G S

(The following proceedings were held outside of the presence of the Jury)

THE COURTROOM DEPUTY: All rise. Court is now in session, the Honorable Edward M. Chen is presiding.

THE COURT: Good morning, everyone. Have a seat.

THE COURTROOM DEPUTY: Court is calling the case In Regarding Tesla, Inc. Securities Litigation, Case No. 18-4865. Counsel, please state your appearances for the record, beginning with the plaintiffs.

MR. PORRITT: Good morning, Your Honor. Nicholas Porritt on behalf of Levi & Korsinsky, the plaintiff and the class.

THE COURT: Good morning.

MR. PORRITT: Good morning, Your Honor.

THE COURT: Mr. Spiro.

MR. SPIRO: Good morning, Your Honor. Alex Spiro, Quinn Emanuel, on behalf of the defendants.

THE COURT: Good morning. Okay, I have a number of things I want to talk about.

With respect to the slides, I've determined that I'm not going to admit those as evidence. You know, case law's not particularly clear, but I think the gist is that the problem with the slides to be admitted is that these are conclusions of

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1 an expert. So they really are in the nature of a portion of an
2 expert report.

3 And because they kind of reach -- go to the ultimate
4 conclusion, they're not like an intermediary piece of evidence
5 like a log of phone calls or a log of cell tower locations, and
6 picking out the prime ones for someone to see, or a list of
7 employees or something like that. This goes to an ultimate
8 question. And so normally this is not the kind of thing that
9 goes in as a piece of evidence.

10 On the other hand, I fully appreciate that this is an
11 unusual situation because it's not just a simple verdict of
12 yes, no, and if the damages, is it "blank" amount. There's a
13 complicated table.

14 So I am going to allow that demonstrative to be shown to
15 the jury, if they request. And I intend -- and that's why I
16 sent out the proposed instruction last night, that takes the --
17 the usual instruction that: You are not going to be given a
18 transcript, but adds to that that if they want to request a
19 readback -- so I'm not going to underscore any one thing, but a
20 general readback of testimony or a review of demonstrative
21 slide, they can ask the Court and the Court will decide. So
22 they will know they have the option, and if they ask that, then
23 we'll decide how to handle it at that point.

24 **MR. SPIRO:** Yeah. Thank Your Honor.

25 So obviously we understand the Court's ruling that they

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1 are demonstratives and not being entered into evidence. As to
2 the Court's proposed slight change to the instruction, there
3 was sort of two things that just caught my eye and I want to
4 make sure that I'm understanding the Court correctly.

5 One was on transcripts. And I don't think the Court would
6 use its discretion but I'm not so sure a court -- if they were
7 to say: I want to hear Guhan Subramanian's testimony regarding
8 his resume, if they were to request that, I don't know that any
9 judge has the discretion to say yes or no. I just -- that
10 struck me as strange phraseology on there.

11 I've always been under the impression, although never have
12 seen -- never had cause to challenge it, that if a jury does
13 actually request, it's sort of understood that they're allowed
14 to get testimony readback. So that caught my eye.

15 But I understood the instruction to basically mean --
16 which we're fine with -- if they said: We would like to hear
17 testimony, we would like to see a demonstrative, they'd come
18 back in, they get to see it. We understand that. And if
19 that's the gravamen of what the Court is so saying, we
20 understand the Court's instruction.

21 **THE COURT:** That's it. And to meet your concern, you
22 know, there's a whole question. The Ninth Circuit encourages
23 full readback of the entire -- you know, which I don't think
24 anybody does. But, that suggests there's some discretion as to
25 how much to read, and maybe even if. I know some of my

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1 colleagues simply say no.

2 But, I could just simply delete the "may or may not grant"
3 and just say I will consider the request. And just leave it
4 open. Maybe that's a safer thing.

5 **MR. SPIRO:** That's probably -- again, it just caught
6 my eye, Your Honor.

7 **THE COURT:** All right.

8 **MR. PORRITT:** We had no order as originally drafted of
9 the slide amendment, I'd be inclined -- I'd be inclined to stay
10 with the original language but I don't have an issue with
11 "consider," "may or may not." I don't think there's much
12 difference in those.

13 **THE COURT:** Okay. I'm also going to remind the jury
14 at this point, because we've been using the term
15 "demonstrative," they may not know what we're talking about,
16 and see the distinction between exhibits and demonstratives. I
17 think -- my plan, as we start our final day of testimony, is to
18 tell them in advance that things have been admitted into
19 evidence they will get to see, they'll get to bring that
20 back -- because I'm going to tell them that anyway, you know --
21 into the jury room. But demonstratives do not.

22 I don't want them to be under the misimpression that these
23 demonstratives will go back with them. They should know that
24 now. So if they want to pay particular attention -- and I
25 assume you all are going to have some demonstratives during

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1 your closings -- that, you know, they should know, that's not
2 -- they can't say: Oh, I'm not going to worry about it, I'll
3 see it in the jury room. Because there's no promise of that.

4 **MR. SPIRO:** We defer to the Court's discretion on that
5 issue.

6 **THE COURT:** Okay.

7 **MR. PORRITT:** Just to be clear, of course, we're
8 maintaining our -- we did move those slides into evidence.

9 **THE COURT:** Yes.

10 **MR. PORRITT:** You're overruling our motion. I just
11 want to make sure that is preserved for the record.

12 We're not --

13 **THE COURT:** Yes. It is preserved for the record. So
14 I will sustain the objection, just to be clear for the record.

15 **MR. PORRITT:** Very good.

16 **MR. SPIRO:** The Court had other issues?

17 **THE COURT:** Yes. A couple other issues.

18 A ruling on the last series of evidentiary objections, I'm
19 going to get out an order momentarily. I don't know if -- are
20 we going to reach Mr. Fischel this first session?

21 **MR. SPIRO:** No, Your Honor. In light of the Court's
22 admonition day one of the trial to not create extra work for
23 the Court -- and I do genuinely appreciate how hard the Court
24 and the Court staff has been working, I see it, it's clear to
25 me -- I don't think the Court should endeavor to go too much

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1 further than this morning, because we don't know exactly until
2 plaintiff rests what we're going to do.

3 **THE COURT:** Okay. Well, I just ask because otherwise
4 I want to give you all my oral rulings now. But it's ready to
5 be filed. You'll have it in short order.

6 **MR. SPIRO:** Thank you, Your Honor.

7 **MR. PORRITT:** Very good, Your Honor.

8 **THE COURT:** So on that front -- and I appreciate the
9 parties' effort, although at the end of the day some of us are
10 still burning the midnight oil, concerning the number of
11 witnesses and the number of exhibits.

12 I have my rule that I impose, and I would admit some at
13 mid-trial or after trial began as a deterrent, ended up adding
14 -- I ended up not adding a lot of time in. There were times,
15 especially that one day with the BART problem, we would have
16 been -- we probably would have added, you know, 30, 40 minutes.
17 But I didn't, since there was no -- they weren't here anyway.

18 At the end of the day, I think I added ten minutes a side.
19 And that was from the first two days. And out of the mercy
20 rule, I'm going to rebate those ten minutes back to you all.
21 It was ten minutes a side, so it's fair. And so there's no
22 due-process argument that I sprung this on you after I had
23 already sent the hour limitation. And, knowing that we're
24 going to finish today with those ten minutes, we will finish
25 evidence today. I have no doubt about that. If it was going

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1 to delay trial -- my main goal is to make sure we get it to the
2 jury when we said we would.

3 So whatever the hours were, which are now pretty short,
4 you can add ten minutes. And Vicky will figure that out.

5 **MR. PORRITT:** Thank you, Your Honor. Appreciate it.

6 **THE COURT:** Every minute counts. That's it.

7 **MR. SPIRO:** Your Honor, probably the only other thing
8 I should flag for the Court is, you know, we'll have an
9 application after plaintiff rests. We could just -- if we're
10 at a natural point to continue, we could continue, I guess, and
11 preserve that.

12 **THE COURT:** Uh-huh.

13 **MR. SPIRO:** But we'll want to before -- at the first
14 available break, to at least briefly address it. And when I
15 say "briefly," I mean briefly.

16 **THE COURT:** Yeah.

17 **MR. SPIRO:** Just so that the Court has it flagged for
18 it.

19 **THE COURT:** Yeah. And if we're not at a convenient
20 point, you can simply say that you make your motion, and I'll
21 say "We'll take it up later." So at least you've timed your
22 motion, so it's --

23 **MR. SPIRO:** Right. The -- I tried to actually do that
24 yesterday, Your Honor. And I apologize if, by elbowing my
25 colleague, I interrupted. I had understood, just so the Court

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1 understands, that before each expert witness, the Court was
2 going to give that instruction. That's what I understood the
3 Court to say earlier on in the case.

4 So when I said that, or when I triggered my colleague to
5 say that, I did not intend to interrupt. I just -- so perhaps,
6 given we're mid-testimony, maybe after the testimony.

7 **THE COURT:** Okay.

8 **MR. SPIRO:** The other issue with the expert that I
9 mentioned at the close yesterday, Your Honor, --

10 **THE COURT:** Yeah.

11 **MR. SPIRO:** -- was the volunteering in violation of
12 the Court's order of the information that he did. I'm not
13 going to get into a whole song and dance about it. I know what
14 I saw. I know the Court saw what the Court saw. And I think
15 anybody who sees into this knows what happened.

16 At this time, I'm not moving to strike his entire
17 testimony as a remedy, or move for mistrial. But I do want to
18 put on the record that it was, again, obviously an intentional
19 attempt to infect the record with that.

20 And if he does that or anything like that again, I just
21 want the Court to know, I am going to move for a mistrial, and
22 I am going to move to strike his entire testimony, because
23 there's no other remedy that puts the genie back in the bottle.
24 So I do want to put plaintiff and the Court on notice of that.

25 **THE COURT:** Well, what I intend to do is before we

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1 start -- actually, might need to do this without the jury -- I
2 can admonish the witness not to make any other reference to
3 court rulings, so he hears it from the Court.

4 **MR. SPIRO:** Understood, Your Honor. I don't want to
5 bring it back up in front of the jury.

6 **THE COURT:** Yeah.

7 **MR. SPIRO:** But, but, the Court can admonish. I'm
8 going to be watching, obviously.

9 **THE COURT:** Right.

10 **MR. PORRITT:** And Your Honor, Mr. Spiro's making all
11 sorts of --

12 **THE COURT:** I understand.

13 **MR. PORRITT:** -- insinuations. And there's no
14 evidence of that, whatsoever. Even in their papers, they said:
15 Mr. Porritt did not deny that he instructed the witness to say
16 this, when I obviously did. So, I mean, that is blatantly
17 misrepresenting the record. The Court's seen --

18 **THE COURT:** I've made no finding that there was any
19 such instruction or purposeful directive from counsel. So I'm
20 not going to -- and I don't need to make any of those findings.
21 Because, you know, I think right now, as it stands, it's
22 happened, and I'm going to admonish the witness not to do it
23 again.

24 So I think we're going to --

25 **MR. PORRITT:** And perhaps counsel for defense could

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1 not present questions that suggest or require, perhaps, a full
2 response that would suggest a reference to those rulings. So
3 that might be -- perhaps, you know -- perhaps defense counsel
4 can help themselves in that regard.

5 **THE COURT:** There's lots of things that can be done.
6 Maybe, even though he may not have intended it, perhaps you
7 could have reminded him a third time not to say -- I mean,
8 there's enough blame to go around. My goal is let's just keep
9 this record as clean as we can. And I'm going to admonish him,
10 and hopefully he'll listen, because it will be very clear.
11 I'll make it very clear to him. We should have him come in
12 before the jury does, because I'll want to see him anyway
13 before the jury comes in. I'll tell him.

14 In terms of the expert opinion, you know, I didn't give it
15 again. Is the request to give it at the end of his testimony?
16 Or --

17 **MR. SPIRO:** I'll confer with my colleagues. I'm just
18 explaining to the Court that's the reason that you heard that,
19 because I had understood the Court to say that earlier in the
20 case. But, we are where we are.

21 **THE COURT:** Okay.

22 **MR. SPIRO:** So I'll confer with my colleagues and --

23 **THE COURT:** All right. Let's see. Did we get the
24 stipulated facts for the jury instructions yet from you?

25 **MR. PORRITT:** Um, I don't think we have any -- we've

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1 been trying to -- there was a lot going on last evening, so I
2 don't know if we have made any progress towards adding any to
3 what was already in the pretrial brief. I believe that's a
4 fair statement on the status --

5 **THE COURT:** Should I use the pretrial brief, then, as
6 the stipulated facts that listed?

7 **MR. SPIRO:** Before there's a -- before the Court comes
8 back from the first break, we will have a firm answer to the
9 Court.

10 **THE COURT:** Okay.

11 **MR. SPIRO:** Because we do think you will be able to at
12 least instruct on the law today.

13 **THE COURT:** Okay. Because I have gone through the
14 instructions. There's that. I don't think there's been
15 judicial notice of anything. So I removed that one.

16 I'm going to add the thing about the jury can request
17 readback, and that's about it. I'm leaving everything.

18 All your objections have already been made; they've been
19 ruled on. So --

20 **MR. SPIRO:** Understood.

21 **THE COURT:** Ready to roll, if we get there today.

22 **MR. SPIRO:** Right. Of course, we'll have an
23 application at the end of the case -- at the end of their case.
24 That's a serious application. But with that, understood, as
25 the Court stands right now.

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1 **THE COURT:** Okay. And then I got your comments on the
2 verdict form which I just received, and haven't had a chance to
3 look at it. You may have some comments. But obviously that
4 won't have to be decided until Friday when I give the final
5 instructions.

6 You'll want to know before you go into closings -- I'll
7 have that for you -- my final ruling on the form of the
8 verdict, because you may want to use that in your closings.

9 **MR. PORRITT:** Absolutely, Your Honor.

10 **THE COURT:** So I'll have that, you know, some time
11 tomorrow or tonight or something, for you.

12 **MR. SPIRO:** Thank you.

13 **MR. PORRITT:** Very good, Your Honor.

14 **THE COURT:** Okay.

15 **MR. PORRITT:** Your Honor, there's still a pending
16 motion, our motion to admit eight exhibits from Dr. Hartzmark.
17 We're still waiting for defense's response. We tried to get
18 that last night, and we didn't hear anything.

19 **THE COURT:** That's the 338, 429, et cetera?

20 **MR. PORRITT:** Exactly. Yes, Your Honor.

21 **THE COURT:** Okay.

22 **MR. ROSSMAN:** Hi -- good morning, Your Honor. Sorry.
23 Getting my mask off.

24 We have good news, which is that we -- in light of the
25 prior guidance Your Honor's given, we don't have objections to

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1 any exhibit except with respect to Exhibit 570. We request,
2 consistent with other redactions, that there be one paragraph
3 redacted, which I can hand to Mr. Porritt.

4 **THE COURT:** Hand that to counsel.

5 (Document tendered)

6 **MR. ROSSMAN:** The Court -- I think it will appreciate
7 there's hearsay 403 and legal conclusion consistent with how he
8 handled some of the other articles that have come in.

9 **MR. PORRITT:** No objection, Your Honor, to that
10 redaction.

11 **THE COURT:** All right.

12 **MR. ROSSMAN:** We preserve our prior positions, but I
13 think that is consistent with the Court's --

14 **THE COURT:** All right. So all those will be admitted,
15 and 570 will have the redactions as indicated.

16 **MR. PORRITT:** Yes. Will defendants submit a --

17 **MR. ROSSMAN:** Yes.

18 (Reporter clarification)

19 **MR. PORRITT:** Defendants will submit a redacted form
20 of Exhibit 570 for the Court.

21 **THE COURT:** All right. So just for the record, 338,
22 429, 565, 572, 594, 721 and 763 are admitted. 570 will be
23 admitted subject to redaction.

24 I am sustaining the objection to the slides that were
25 tendered by the plaintiffs, 11, 12, 22, 24, 52, 55, 46, 47, and

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1 I think there has a Heston slide, No. 7.

2 **MR. PORRITT:** Correct, Your Honor.

3 **THE COURT:** And for the reasons stated, the
4 objection's sustained. But I'm going to give the instruction
5 about access to demonstratives.

6 **MR. PORRITT:** Very good, Your Honor. Thank you.

7 (Trial Exhibits 338, 429, 565, 572, 594, 721 and 763
8 received in evidence. Trial Exhibit 570 received in evidence,
9 subject to redaction)

10 **THE COURT:** All right? So before we bring the jury
11 in, maybe we can have the witness come back, and I can give him
12 the admonishment.

13 **MR. PORRITT:** Okay.

14 (A pause in the proceedings)

15 (Professor Hartzmark re-takes the witness stand)

16 **THE COURT:** Good morning, Mr. Hartzmark.

17 **THE WITNESS:** Good morning, Your Honor.

18 **THE COURT:** So before the jury comes in -- and I think
19 you've probably heard our discussion this morning. I want to
20 make sure you understand that I've already ruled that the jury
21 is not to be told anything about my rulings in an explicit way.

22 For various reasons, at the end of the day, we're going to
23 instruct the jury that they should assume that the tweets in
24 question were not true, et cetera. But we've avoided telling
25 the jury that "The Court found that," because of the concern

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1 about some undue effect that might have. And so yesterday when
2 you made a finding -- made a comment about "Judge Chen already
3 found this," that was in contravention of what we're trying to
4 do.

5 So all I'm going to ask you to do is don't make any
6 reference to "the Judge" or "the Court found," you know, in
7 your testimony today.

8 **THE WITNESS:** Okay. I'll do that.

9 **THE COURT:** All right?

10 **THE WITNESS:** Yes.

11 **THE COURT:** Thank you.

12 **THE WITNESS:** Thank you, Your Honor.

13 **MR. PORRITT:** Thank Your Honor.

14 **THE COURT:** All right, so why don't we check on the
15 jury and see if they're here.

16 (A pause in the proceedings)

17 (The following proceedings were held in the presence of
18 the Jury)

19 **THE COURTROOM DEPUTY:** All rise for the jury.

20 **THE COURT:** All right. Have a seat, everyone.

21 Good morning, members of the jury, welcome back. Thank
22 you again for your promptness and for your dedication. We
23 really appreciate that.

24 So we are in the middle of Professor Hartzmark's
25 cross-examination. And so that's where we are going to pick

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1 up.

2 Before we do, let me explain one thing to you. And that
3 is, we've referred to various things, and you have seen various
4 things that we are calling "demonstratives," slides and other
5 things, and you may perhaps in closing argument see what we
6 call "demonstratives." That's different from exhibits. Other
7 things you have seen are exhibits, and you have heard us -- you
8 have heard me either admit or deny various things.

9 What you will have -- and I will explain this to you in
10 the final instructions -- when you deliberate, you will have
11 the exhibits. You'll have access to all the exhibits that have
12 been admitted. You will not have access to demonstratives. So
13 slides and things that are being shown to help you understand
14 the testimony, those are aids to help you understand, but they
15 are not exhibits.

16 I will also explain to you, when we get to that final
17 stage, your ability to request to see certain things other than
18 exhibits.

19 But I want to make sure that it's clear in your mind that
20 when something is an exhibit and we admit it, it is part of the
21 record, a formal part of the record, and you will have those in
22 the jury room to look at. But things that I do not admit, you
23 will not have. So, that's the terminology. And I'll instruct
24 you more when we get to the final instructions.

25 So, thank you.

HARTZMARK - CROSS / ROSSMAN

1 Mr. Rossman, you may proceed.

2 **MR. ROSSMAN:** Thank you, Your Honor.

3 **MICHAEL HARTZMARK, PLAINTIFF'S WITNESS, RECALLED**

4 **CROSS-EXAMINATION, RESUMED**

5 **BY MR. ROSSMAN**

6 **Q** Good morning, Professor.

7 **A** Good morning, Mr. Rossman.

8 **Q** I'm literally on a clock, so you will bear with me, and we
9 will move as quickly as we can for everyone's benefit. And I'm
10 sure you appreciate that I can't possibly cover all of the
11 slides and data that you have talked about.

12 Now, am I right to assume, Professor, that since you left
13 the stand yesterday, you have not discussed this case with
14 anyone else?

15 **A** Correct.

16 **Q** Okay. Not with plaintiff's counsel, not with any members
17 of your team supporting you?

18 **A** I have not.

19 **Q** The class definition, just a couple quick technical things
20 to ask you, and then I want to return to where we were
21 yesterday.

22 The definition of the class in this case, do you
23 understand, includes short sellers?

24 **A** Um, that's my recollection.

25 **Q** Okay. And if you would, I want to show a couple slides.

HARTZMARK - CROSS / ROSSMAN

1 One slide in particular that you testified about, Slide 24.
2 And this is on implied volatility.

3 **MR. ROSSMAN:** If we can have that up for one second,
4 please?

5 (Document displayed)

6 **BY MR. ROSSMAN**

7 **Q** Do you see that slide in front of you?

8 **A** Yes.

9 **Q** Am I right, Professor, that this information in this slide
10 comes from Professor Heston?

11 **A** Yes. Yes. Um --

12 **Q** That was my only question. Thank you, sir.

13 Now, yesterday, if you will recall, one of the things we
14 were discussing was August 13th. And in particular, the blog
15 post on August 13th that was published by Mr. Musk. Do you
16 recall that?

17 **A** Yes.

18 **Q** And it's in evidence as Exhibit 53. If we could put that
19 up, please.

20 (Document displayed)

21 **Q** Okay. And one of the issues, one of the claims in this
22 case relates to one of the August 7th tweets.

23 **MR. ROSSMAN:** And if we could show that briefly,
24 Exhibit 13, in evidence.

25 (Document displayed)

1 BY MR. ROSSMAN

2 Q And the tweet is:

3 "Investor support is confirmed. Only reason
4 why this is not certain is that it's
5 contingent on a shareholder vote."

6 You remember that, right?

7 A Yes.

8 Q So I want to compare that tweet to the August 13th blog
9 post for a moment. Okay? And if we could, if you turn to the
10 section "Next steps," which is on the second page of the blog
11 post. Okay?

12 (Document displayed)

13 Q What are the next steps?

14 Do you see that?

15 A Yes, I see it.

16 Q Okay. And it indicates that Mr. Musk is going to continue
17 to talk with investors, and investigate a range of potential
18 structures and options.

19 Right? That's what it says, sir. Correct?

20 A Um, yeah, he's going to continue to talk with investors,
21 and he's engaged advisers to investigate a range of potential
22 structures and options, correct.

23 Q And the blog post also tells investors (As read):

24 "If and when a final proposal is presented,
25 an appropriate evaluation process will be

1 undertaken by a special committee of Tesla's
2 board..."

3 Right?

4 **A** Yes.

5 **Q** Being set up. And:

6 "If the board process results in an approved
7 plan, any required regulatory approvals will
8 need to be obtained..."

9 Right?

10 **A** Yes.

11 **Q** And the plan will then be submitted to shareholders for a
12 vote. Right?

13 **A** Yes.

14 **Q** So to the extent that investors interpreted that
15 August 7th tweet that you saw a moment ago which said only
16 reason why this isn't certain, to the extent that they
17 interpreted that literally to mean that the only step left was
18 a shareholder vote, Mr. Musk's August 13th blog post discloses
19 a number of additional steps that still need to happen.

20 Right?

21 **A** Um, yes. There are some steps here listed in this
22 paragraph.

23 **Q** Yeah. And nevertheless, the stock price went up on the
24 13th of August. Correct, sir?

25 **A** The stock price, um, on the 13th, I think, went up.

HARTZMARK - CROSS / ROSSMAN

1 Although it was not statistically significant, but it went up.

2 **Q** So the disclosure of additional steps did not cause the
3 stock to go down, certainly. Right?

4 **A** I -- I believe the stock went up, yes.

5 **Q** Very good. Now, one of the things that you mentioned in
6 your testimony was the statement -- was related to the
7 statement "Investor support confirmed."

8 Remember that?

9 **A** I would have discussed that, yes.

10 **Q** And if we go back to the August 13th blog post, and just
11 above the heading "What are the next steps?"

12 (Document displayed)

13 **MR. ROSSMAN:** Can we highlight that sentence just
14 above "What are the next steps?"

15 (Document displayed)

16 **BY MR. ROSSMAN**

17 **Q** Blog post says -- and highlight the last sentence if you
18 could for me, please.

19 (Document highlighted)

20 **Q** (As read)

21 "My best estimate right now is that
22 approximately two-thirds of shares owned by
23 all current investors would roll over into a
24 private Tesla."

25 Do you see that?

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1 **A** Yes.

2 **Q** And you had a comment on that in the direct examination
3 yesterday. Right?

4 **A** Say that again?

5 **Q** You mentioned that in your testimony yesterday. Right?
6 It was something that you observed in the blog post. Right?

7 **A** I thought there was a -- I thought there was another
8 sentence, but the -- it's suggestive that there is investor
9 support.

10 **Q** Okay. Are you aware that just one day before this blog
11 post, on August 12th, Mr. Musk received a presentation from
12 Goldman Sachs which estimated that approximately 60 percent of
13 Tesla shareholders would roll over into a private Tesla?

14 **MR. PORRITT:** Objection. That misstates the facts in
15 the record.

16 **THE WITNESS:** Yeah.

17 **THE COURT:** Sustained.

18 **BY MR. ROSSMAN**

19 **Q** Have you seen Exhibit 254, that's in the record as
20 evidence?

21 **A** I can't recall.

22 **Q** Okay. Are you aware of testimony that was given regarding
23 a presentation that Goldman Sachs gave?

24 **A** No.

25 **Q** Okay. You're not in a position to opine one way or the

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1 other about the truthfulness of this statement (Indicating),
2 are you, sir?

3 **A** Truthfulness of what statement?

4 **Q** Of this statement that's highlighted in the exhibit before
5 you. The August 13th blog post. You have no basis to opine on
6 whether or not that's true, correct?

7 **A** I am not opining as to whether it's true or false.

8 **Q** We'll leave that to the jury to sort that evidence. Agree
9 with me on that, sir?

10 **A** Yes.

11 **Q** Very good. But you didn't -- in your testimony in
12 response to plaintiff's counsel's questions, you didn't tell
13 the jury anything about the Goldman presentation or Goldman
14 testimony in this trial, right?

15 **A** I was focusing on public documents.

16 **Q** Very good.

17 **Q** We've previously talked about the period from August 7th
18 to August 13th. Okay? I now want to focus your attention on
19 August 14th, after the blog post. Follow me?

20 **A** Yes.

21 **Q** In your direct testimony, sir, you said that there was an
22 absence of information on August 14th that was weighing on the
23 market. Do you recall that?

24 **A** Yes.

25 **Q** Okay. But that's not what you said in your report. In

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1 your report, you opined that the stock price declined to close
2 on \$347.64 on reports questioning the accuracy of Musk's latest
3 tweets on hiring advisors, Goldman Sachs and Silver Lake.

4 That's what you said in your report, Paragraph 109. Isn't
5 that right, sir?

6 **A** Yes. It's clear that there was, as I said, confusion in
7 the market. My recollection was that there were -- whatever
8 the truth was, which again we'll leave to the jury, there were
9 different interpretations of the relationship with Silver Lake
10 and Goldman Sachs. There were rumors that they had been hired;
11 there were rumors that they had not been hired.

12 Again, my focus was what was being rumored and speculated
13 about in the public market.

14 **MR. ROSSMAN:** Exhibit 361, please.

15 (Document displayed)

16 **BY MR. ROSSMAN**

17 **Q** Okay. This is the tweet that you are referring to in your
18 report:

19 "I'm excited to work with Silver Lake and
20 Goldman Sachs as financial advisors..."

21 Right?

22 **A** Yes. This was the tweet. And then there was -- my
23 recollection is that there was, again, rumor and innuendo in
24 the markets.

25 **Q** Now, at the time that you prepared your report, Professor,

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1 you assumed that this tweet (Indicating) was a misstatement.
2 Right?

3 **A** I can't recall.

4 **Q** You assumed that it was an alleged misstatement. I can
5 refer you, Professor, to your deposition testimony transcript,
6 if you have it in the witness box. Let me know if you need a
7 little assistance.

8 **A** Is it --

9 **Q** Your March, 2022. And the transcript, Page 215, starting
10 at Line 19 through -- I'm sorry.

11 **A** Page 215?

12 **Q** Give me one second. I think that should be 215, starting
13 at Line 19. Let me make sure that page number is right. There
14 seems to be a typo.

15 **MR. ROSSMAN:** And I'm going to just offer this to
16 refresh, for the moment, Your Honor.

17 **THE COURT:** All right. So you can direct the witness
18 what parts to read to himself.

19 **MR. ROSSMAN:** Yeah.

20 **BY MR. ROSSMAN**

21 **Q** You can just read to yourself, I think just 19 through 24
22 for now. Right?

23 (Document displayed)

24 **A** It looks like the discussion about Silver Lake and Goldman
25 starts on Page 214.

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1 **Q** Okay.

2 **THE COURT:** Why don't you go ahead and read that to
3 yourself, and then the attorney will ask you a question once
4 you finish reading.

5 **BY MR. ROSSMAN**

6 **Q** Go ahead.

7 (Witness examines document)

8 **MR. PORRITT:** Your Honor, is this being broadcast to
9 the jury?

10 **THE COURT:** No.

11 **THE COURTROOM DEPUTY:** It was.

12 **THE COURT:** Okay.

13 **MR. ROSSMAN:** It should not have been.

14 **THE COURT:** Okay. You should disregard what you just
15 saw. This is intended only for the witness.

16 **BY MR. ROSSMAN**

17 **Q** Let me know when you are ready, Professor.

18 **A** Yes, I'm ready.

19 **Q** And if you could, I think it would also be helpful for you
20 to look at Page 21, starting at Line 6.

21 **A** What page?

22 **Q** Page 21.

23 **A** I can't --

24 **Q** Page 21, 2-1.

25 **A** Of the deposition transcript?

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1 **Q** Same transcript.

2 **A** Deposition?

3 **Q** Yes, sir.

4 (Witness examines document)

5 **THE COURT:** Read that through Line 10? Is that what
6 you're asking?

7 **MR. ROSSMAN:** Yes, Your Honor.

8 **THE COURT:** Thank you.

9 **MR. PORRITT:** I think the relevant testimony goes
10 through Line 21.

11 **MR. ROSSMAN:** I'm using it to refresh. I can point
12 him to anything I like, Your Honor.

13 **THE COURT:** Well, he can read what he wants to refresh
14 his recollection. If he wants to read further than that,
15 that's fine.

16 Let me know when you finish reading.

17 **THE WITNESS:** So you want me to read Page 21 for sort
18 of the general --

19 **BY MR. ROSSMAN**

20 **Q** Let me pause here.

21 Is your recollection now refreshed, Professor, that at the
22 time you wrote your report, you assumed that the Silver Lake
23 and Goldman Sachs tweet was a misstatement?

24 **A** It was in -- my recollection now, in the table of
25 misstatements, it was a misstatement because the -- the day

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1 afterwards, it was reported, and walked back, um, that --
2 well...

3 (Witness examines document)

4 **A** That the bank still hadn't signed on when the -- Musk
5 tweeted the late Monday that he was working with Goldman Sachs.

6 It was, again, I -- it was a misrep because it was, I
7 guess, walked back.

8 **Q** My question to you -- I think you answered it,
9 Professor -- was you assumed it was a misstatement when you
10 wrote your report. True?

11 **A** True.

12 **Q** And you understand as we sit here in the courtroom now,
13 there's no claim in this case that that tweet was false.
14 Correct?

15 **MR. PORRITT:** Objection, Your Honor. We're now
16 getting into court orders, which I thought we had agreed not
17 to --

18 **MR. SPIRO:** I'm not asking about the court --

19 **THE COURT:** They're talking about whether that's a
20 claim in this case, not a court order.

21 **MR. ROSSMAN:** (Nods head)

22 **THE COURT:** So objection overruled.

23 **THE WITNESS:** Um, it's a legal question. I -- I don't
24 want to -- I don't know.
25

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1 **BY MR. ROSSMAN**

2 **Q** Okay.

3 **A** Okay.

4 **Q** Now, are you aware that Mr. Dees -- Mr. Dees, the co-head
5 of investment banking at Goldman, testified in this trial about
6 how Goldman was actually working with Mr. Musk?

7 **A** I did not come to that testimony. I'm sorry.

8 **Q** Did you come to the testimony of Mr. Durban of
9 Silver Lake, who came to this courtroom to testify about how
10 Silver Lake was working with Mr. Musk?

11 **A** I was not here.

12 **Q** Okay. You didn't mention the Goldman Sachs and
13 Silver Lake tweet to the jury in your direct examination, did
14 you, sir?

15 **A** Again, there were 2,400 different documents of all types.
16 That document and -- I understand in terms of the public market
17 was that there was a tweet, and then within the public market
18 there were rumors about the relationship between Tesla, Musk,
19 Silver Lake and Goldman. So I don't know what the private
20 situation was.

21 **Q** I'll make it as simple as I can for you, sir.

22 In your report, you attributed the stock decline on that
23 day, on August 14th, to that tweet, right?

24 You didn't mention that to the jury in your testimony.

25 **A** Again, the stock -- wait, the stock decline?

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1 **Q** On August 14th, okay?

2 **A** Right.

3 **Q** You, in your report, attributed the decline in the stock
4 that day, okay, to reports questioning the accuracy of that
5 tweet that is no longer in the case. Isn't that true?

6 **A** Yes. As I told the jury yesterday, confusion,
7 speculation, rumor can cause, you know, uncertainty, and a
8 price can go down as a reaction.

9 **Q** So you didn't mention the tweet in your testimony -- you
10 didn't exclude the damages that day from your damage
11 calculation, even though allegations about that tweet being
12 false are not in the case.

13 **A** But it --

14 **Q** Is that true, sir?

15 **A** It's linked -- it's true, but it's linked to the
16 allegations, and it's a situation, again, within the public
17 market. There was confusion and disruption which is, you know,
18 the nature of the consequential harm.

19 **Q** Okay. Consequential harm for making a truthful statement?

20 **MR. PORRITT:** Objection, Your Honor. That's
21 argumentative.

22 **THE COURT:** Sustained.

23 **MR. ROSSMAN:** Withdrawn. Okay?

24 **BY MR. ROSSMAN**

25 **Q** Now, in your report, you didn't say there was the

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1 confusion. In your report, you said it was a misstatement.
2 Right?

3 A Well --

4 Q True? Yes or no?

5 A I said it was a misstatement.

6 Q Very good. I want to ask you about August 15th. Okay?

7 On August 15th, there was a decline in Tesla stock, but it was
8 almost zero that day. Right?

9 A I don't have the graph in front of me, but I'll take your
10 word for it.

11 Q Okay. On August 16th, I want to ask you about what you
12 wrote that day. Okay?

13 In your report what you said was (As read):

14 "The stock price declined during the day to
15 close at \$335.45 on mixed news and analyst
16 commentary on Tesla's Model 3 production
17 forecast (favorable news) and base Model 3
18 future profitability (unfavorable news)."

19 Do you recall writing that in your report, and that's
20 Paragraph 121?

21 A If I can take a look.

22 Q Sure.

23 A My recollection -- more than a year ago.

24 Q I believe you have the report available to you, if that
25 will refresh your recollection on the stand. It's Exhibit 375

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1 for identification. And it's at Paragraph 121, which you'll
2 find at Page 94 of the exhibit.

3 And I'm -- I believe I read that faithfully. Let me know
4 when you have it.

5 (Document displayed to the Witness)

6 **A** I'm sorry; I did it again.

7 **Q** Page 94 of the exhibit, Paragraph 121.

8 **A** Yeah, I'm sorry.

9 **THE COURT:** The confusion is that the binder yesterday
10 had the wrong one. So you're talking about --

11 **THE WITNESS:** I went to the class cert report. Let me
12 just check.

13 **BY MR. ROSSMAN**

14 **Q** It's on your screen for your convenience, Professor.
15 You're free to look at it, but I'm only going to ask you about
16 what's on the screen.

17 **A** Yeah. I've got two copies of the class certification
18 report. That's why I keep --

19 **Q** I'm not asking about that one.

20 **A** Okay.

21 **Q** It's right in front of you if you want to take a look at
22 it, Professor.

23 (Document tendered to the Witness by the Courtroom Deputy)

24 **THE COURT:** Are you directing his attention to
25 Paragraph 121?

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1 **MR. ROSSMAN:** Paragraph 121, which is on the screen --

2 **THE WITNESS:** I was just handed another version of my
3 class certification report.

4 **THE COURT:** Why don't you just look on the screen.

5 **MR. ROSSMAN:** Professor, if you would bear with me --

6 **THE WITNESS:** I -- I -- it would be good to get a
7 sense of --

8 **THE COURT:** Yeah. If you want to scroll down, and he
9 wants to see the preceding paragraphs --

10 **BY MR. ROSSMAN**

11 **Q** We'll go wherever you need to go. But you wrote in your
12 report, Paragraph 121 -- you're looking at it (As read):

13 "The stock price declined during the day to
14 close at 335.45 on mixed news and analyst
15 commentary on Tesla's Model 3 production
16 forecast (favorable news) and base Model 3
17 future profitability (unfavorable news)."

18 That's what you wrote in your report, correct?

19 **A** Yes.

20 **Q** News related to the Tesla Model 3 car is unrelated to the
21 alleged misrepresentations in this case. True?

22 **A** True.

23 **Q** And following what you identified as the favorable news,
24 the stock opened up that day. Right?

25 **A** Stock opened up, yeah, by .4 percent. Yes.

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1 **Q** Okay. And the unfavorable news came out at 12:20 p.m.
2 Right?

3 (Document taken off display)

4 **THE COURT:** Lost me.

5 **MR. ROSSMAN:** Can we pop up the screen if we can, Ken?
6 It's in that footnote.

7 **THE WITNESS:** There's nothing on my screen.

8 **THE COURT:** We're going to get it back, I assume.

9 (Document displayed to the Witness)

10 **BY MR. ROSSMAN**

11 **Q** There it is, okay. You see Footnote 201?

12 **MR. PORRITT:** Your Honor, can the witness also be
13 shown 202, which is the same testimony -- it's in the same
14 text.

15 **MR. ROSSMAN:** That's fine.

16 **MR. PORRITT:** He's not being shown the proper part of
17 his report and they haven't given him the proper part of his
18 report he's being questioned on. It is quite improper.

19 **THE COURT:** Would you like to see Footnote 202 as
20 well?

21 (Document displayed to the Witness)

22 **THE WITNESS:** Yes. As I said, it would be great to
23 see the context, given --

24 **THE COURT:** Do you want to scroll back to 120?

25 **THE WITNESS:** Yeah. Why don't we --

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1 **THE COURT:** Why don't you scroll back to 120.

2 (Document displayed to the Witness)

3 **BY MR. ROSSMAN**

4 **Q** Okay. I don't -- I don't see what that has to -- okay.

5 **A** Well, I can't -- if I can't see it, I can't -- maybe it
6 has nothing to do with it.

7 **THE COURT:** Okay. Do you want to go down?

8 **THE WITNESS:** Okay.

9 **THE COURT:** Tell them if you want to go up or down.

10 **THE WITNESS:** Down is fine.

11 **THE COURT:** Okay. Go down to 120 -- 122?

12 (Off-the-Record discussion between counsel)

13 **MR. ROSSMAN:** This is not -- I can't give him this
14 (Indicating).

15 (Document displayed to the Witness)

16 **MR. PORRITT:** Can we see the footnote to that text?
17 Again --

18 **THE COURT:** Scroll down to the 203 footnote so we can
19 see that.

20 **BY MR. ROSSMAN**

21 **Q** Yes. In the binder that you have, Professor, I believe
22 it's Tab 2.

23 (Document displayed to the Witness)

24 **Q** And if you could confirm that for me, that would --

25 **A** Yes.

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1 **Q** That would be great.

2 **A** Okay. I'm sorry.

3 **THE COURT:** Now, if you have it, you can turn --

4 **THE WITNESS:** Okay. This is Paragraph 121?

5 **THE COURT:** That's correct.

6 **BY MR. ROSSMAN**

7 **Q** So my question that's pending is just whether that's what
8 you said in your report.

9 **A** Whether what I wrote in 121 is what I wrote in my report?

10 **Q** Well, withdrawn. Let me -- what you were looking for, I'd
11 asked you about the unfavorable news. Wasn't the unfavorable
12 news released at 12:20 p.m., and I believe that's what's
13 indicated in Footnote 12 -- I'm sorry, Footnote 201.

14 What you cite there, Footnote 201, is the unfavorable news
15 you mentioned. True?

16 **A** It appears, if -- I don't know if that's a -- you know, a
17 discussion of news that was indicated earlier. Let me look at
18 my table.

19 **Q** I'm just mindful of the time. There may be hard
20 questions; this wasn't intended to be one of them.

21 (Witness examines documents)

22 **A** I -- I don't have my table in front of me.

23 **MR. ROSSMAN:** Your Honor --

24 **THE WITNESS:** Finding --

25 **MR. ROSSMAN:** Your Honor, I'm going to ask for a

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1 little bit of a time rebate if this continues.

2 **THE COURT:** Well, why don't you sharpen up your
3 question, and maybe you won't have to do that. Reask the
4 question.

5 **BY MR. ROSSMAN**

6 **Q** It's a short simple question, which is: The unfavorable
7 news that you referenced in your report was what's at Footnote
8 201. What was released at 12:20. That's it.

9 **A** It appears that that is -- that's what I cite to, but I'll
10 make it clear. I don't -- oftentimes in financial news there's
11 news that comes out, and then it is covered. And this was the
12 *Wall Street Journal* online; I'm not sure if they were picking
13 something else out. But that is after the fact, if that -- it
14 is the actual first disclosure of that information.

15 **Q** And when the news -- when the unfavorable news about the
16 Model 3 production came out at 12:20 p.m. that day, okay, at
17 that time, the stock price went down. Correct?

18 **A** Um, I can't --

19 **Q** And if you need to, Professor, you can look at your
20 appendix which has the minute-by-minute stock price, and it's
21 in your report.

22 **A** Right.

23 **Q** Going back to the appendix, it's Page 245.

24 **A** Oh, okay, thank you.

25 **Q** And you can see the price at 12:20, and you can confirm

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1 for me whether I'm right.

2 (Document displayed to the Witness)

3 **Q** And it's also on your screen. Trying to appreciate the
4 clock here, and we're trying to help you out, so it's on the
5 screen.

6 **A** Yes. So at 12:20 -- so this was announced at 12:20. This
7 is the -- the -- oh, okay. The interval start is 12:20; the
8 stock price went down. The abnormal return was
9 negative-.14 percent.

10 **Q** Okay. Very good. Now --

11 **A** It's not statistically significant at or below the
12 5 percent level.

13 **MR. ROSSMAN:** We can take that down.

14 (Document taken off display)

15 **BY MR. ROSSMAN**

16 **Q** Now Professor, you agree that whatever stock -- withdrawn.
17 You agree that the stock movement as a result of
18 information coming to the market about the Tesla Model 3 had
19 nothing at all to do with allegations in this case about
20 tweets. Right?

21 **A** Yes.

22 **Q** But yet, you attribute the entire decline in the stock
23 price that day to the tweets in this case.

24 **A** Well, can I --

25 **Q** Right?

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1 **A** Can I see that --

2 **Q** It's a simple question.

3 **A** -- those numbers again? I didn't -- Yes.

4 **Q** I want you to follow my question.

5 **A** Yes.

6 **Q** Okay, thank you. Now, you use the phrase "confounding
7 information"?

8 **A** Yes.

9 **Q** Confounding information is other information unrelated to
10 the allegations of fraud in this case, okay, that could affect
11 the stock price. Right?

12 **A** Yes. That's generally the definition that economists use
13 when evaluating price movements.

14 **Q** We just saw one with the Model 3. Right? That's
15 potentially confounding information. True?

16 **A** It's potentially confounding information, but I didn't --
17 there are two things. One --

18 **Q** That's my only question, Professor.

19 **A** One, I did not usually --

20 **MR. ROSSMAN:** Your Honor?

21 **THE COURT:** He can elaborate, shortly.

22 **THE WITNESS:** And in the analysis of confounding
23 information, I looked at intervals. For example, the interval,
24 if you would put it back up on the screen --

25 **MR. ROSSMAN:** Your Honor, I think he can do --

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1 **THE WITNESS:** It was not --

2 **THE COURT:** Hold on.

3 **THE WITNESS:** The fall was not large enough to be
4 outside of the bounds of what would be expected by chance. And
5 therefore, it was not statistically significant. And as an
6 economist, I then didn't use it.

7 I also -- I can't see the prices. It might have come
8 right back up the next minute.

9 **BY MR. ROSSMAN**

10 **Q** So Professor, if something is not statistically
11 significant, then you as an economist determine that that item
12 of news didn't cause the stock decline?

13 Is that your testimony to the jury?

14 **A** You're confounding my testimony. That's a one -- that's
15 one piece of information, not linked, as you've stated, it's
16 unrelated to the fraud. And that, you would look for
17 statistical significance, to see if it's important.

18 **Q** So when there's information that comes out unrelated to
19 the fraud, you apply your test of statistical significance. Is
20 that what you're saying?

21 **A** What I'm saying is, though the -- for the economic
22 analysis, you do -- you would want to do a full-blown analysis
23 to look at, as I mentioned, quantitative and qualitative
24 information. But when I looked at confounding information, I
25 looked to see whether the movement was large enough that it

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1 would be outside the bounds of what would be expected by
2 chance. That's .14 percent. One percent of Tesla stock was
3 about \$300. That's approximately a 30-cent change in price.

4 To the extent that the jury would expect that to be
5 important confounding negative information, then I would
6 recommend that you reduce the inflation by 30 cents.

7 **Q** Okay. Now, we talked, there's lots of other potentially
8 confounding information that you list in your reports, besides
9 the Model 3. I don't have to go through the whole list. I
10 think you identify issues about tax credits, solar roof tile
11 deals, car batteries being at fault. Probes by the government
12 involving the Model 3 having nothing to do with the tweets.
13 You've got a whole laundry list of potentially confounding
14 issues, correct?

15 **A** Correct. Are you reading from my table?

16 **Q** That's all I'm asking.

17 **A** Yes. I had approximately -- I think it was 14, 12 or 14
18 specific topics that had been disclosed over the ten days that
19 were -- would be -- that I consider to be confounding after I
20 went through the 2,400 or more than 2,400 articles.

21 **Q** Okay. Now, I want to ask you about a different subject
22 because we're tight on time, okay? Love to spend more time on
23 that, but I've got to move on, okay?

24 Okay, consequential damages. Do you recall that subject?

25 **A** Yes.

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1 Q And you claim that as a result of Mr. Musk's tweets, Tesla
2 experienced what you describe as consequential harms. And you
3 give some examples of that. Legal, regulatory, corporate
4 governance issues.

5 Do you recall that subject?

6 A Yes.

7 Q Okay. And for example, one piece of consequential harm is
8 that you said that Tesla board of directors was angered that
9 Mr. Musk tweeted something out about the company without
10 running it by Tesla first.

11 Do you remember that?

12 A Um, not specifically, but that would be a signal of the
13 lack of internal controls. You know, again, from a public
14 perception.

15 Q So take that issue that you just described. You can't
16 tell the jury whether consequential harm as a result of sending
17 out tweets without internal controls would have happened,
18 whether the tweet was true or false. Right?

19 A Yes. As I said, I didn't disaggregate the truthful parts
20 from the -- from the false parts.

21 Q Thank you, Professor.

22 In particular, you had a bunch of slides; I'm not going to
23 take the time -- don't have the time to go through them all
24 with you in detail. But you attributed consequential harm on
25 August 8, the day after the tweets, and August 9th, the day

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1 after that. Right?

2 **A** Well, again, consequential harm for all intents and
3 purposes is a residual. I'm able to precisely, you know, with
4 a reasonable degree of certainty, measure the direct harm, and
5 the consequential harm is the residual.

6 **Q** When you say "the residual," it's just subtracting the
7 difference between how much the stock fell during the period
8 that you measured versus the amount that you can actually claim
9 was -- was directly due to the tweets.

10 **A** Well, how much harm in total associated with that day,
11 less the direct amount. So, yes.

12 **Q** Okay. You call it harm; I call it the stock dropping.
13 But we don't have to quibble.

14 Now, am I right, sir, that the jury decides that the full
15 details about Mr. Musk's tweets were known to the market by
16 August 13th, by the time that he published that blog post that
17 we looked at, then there would be zero consequential damages.

18 **A** I don't -- don't agree with that. It could -- could carry
19 beyond the 13th.

20 **Q** Well, you might not agree with that, but didn't you
21 testify to that in your deposition? Yes or no?

22 **A** I believe the question was -- was different in the
23 deposition.

24 **Q** Great. Let's take a look at it. Could we go to your
25 deposition, starting at Line -- sorry, on Page 231, starting at

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1 Line 25. And we can put it on the screen.

2 (Document displayed to the Witness)

3 **MR. PORRITT:** Are you refreshing? Or impeaching?

4 **MR. ROSSMAN:** I'm going to impeach him.

5 **THE COURT:** Before you put it on the screen, you need
6 to give counsel a chance --

7 **MR. ROSSMAN:** Sorry, Your Honor. 231, Line 25,
8 through 232, Line 24.

9 **THE COURT:** Okay. Give us a chance to look at it
10 before you put it on the screen.

11 **MR. ROSSMAN:** Hold that screen.

12 (Witness examines document)

13 **THE COURT:** Okay.

14 **MR. PORRITT:** For completeness, can we go to 233, Line
15 17, Your Honor? (Inaudible)

16 (Reporter clarification)

17 **MR. PORRITT:** This is a lengthy discussion,
18 Your Honor. He's cherrypicking. I don't think it's fair. For
19 completeness, I'd go through to 235:20.

20 **MR. ROSSMAN:** Your Honor, I would ask that the Court
21 have Mr. Porritt try that on redirect. I think the clip is
22 correct.

23 **THE COURT:** I'm going to play the clip, as requested.
24 As requested by defense. If you want to bring out something
25 more, you can do that on redirect.

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1 Go ahead and play the clip.

2 **MR. ROSSMAN:** Do we have the clip?

3 For expediency, Your Honor, I'll just read it, Your Honor.

4 **THE COURT:** Okay.

5 **BY MR. ROSSMAN**

6 **Q** You said in your deposition, Professor Hartzmark, in
7 response to my questions as follows (As read):

8 **"QUESTION:** Okay. So if you imagine the
9 finder of fact concludes that by August 13th,
10 okay, all the corrective material information
11 has been disclosed on the market, okay, then
12 the class period should end on August 13th.
13 Okay?

14 **"ANSWER:** Uh-huh.

15 **"QUESTION:** The direct -- your direct
16 inflation stops at that number 14.64.

17 **"ANSWER:** Correct.

18 **"QUESTION:** Okay. And so you would -- for
19 the direct inflation -- how would you
20 allocate direct inflation across those five
21 trading days in the hypothetical I just gave
22 you?

23 **"ANSWER:** Well, given that it -- there
24 couldn't be any consequential damages, I
25 would just take the but-for price of 356, you

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1 know, the previous price, and use that as the
2 but-for price and then you would get, let's
3 see, on August, you said August 13th --

4 **"QUESTION:** Yes, sir.

5 **"ANSWER:** August 13th, it would basically be
6 zero. Yeah.

7 **"QUESTION:** Okay. So in that scenario, there
8 would be zero consequential damages?

9 **"ANSWER:** Correct."

10 That was the truthful testimony you gave to me in your
11 deposition, sir. Isn't that right?

12 **THE WITNESS:** Yes, but --

13 **THE COURT:** Thank you.

14 You can explain on redirect.

15 **BY MR. ROSSMAN**

16 **Q** Now, I just want to ask you briefly about August 8th, we
17 were talking about confounding information, one of the pieces
18 of information that you mentioned -- I'm sorry. Strike that.
19 My handwriting is worse in my own notes than on the board.

20 We were talking about consequences damages. Okay? One of
21 the items of consequential damages you mentioned was the SEC
22 investigating the tweets. Do you recall that?

23 **A** Yes.

24 **Q** And if we could, let's look at your Slide 48, briefly.

25 Okay? Was your opinion that on August 8th --

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1 (Document displayed)

2 Q It's on the screen.

3 A Now it is, yeah.

4 Q Just so we remember, Professor, August 8th is the day
5 after the tweets.

6 It was your opinion, and you testified about it on direct,
7 that the SEC -- the news of the SEC probe caused the stock
8 price to go down.

9 Do you recall that?

10 A The probe took place at 10:24. The stock went down from
11 379 to 370 over the day.

12 Q Isn't it true, Professor, that at 10:24 -- and you can
13 look at your minute-by-minute if you need to -- that at 10:24,
14 following the report of the SEC probe, the stock actually went
15 up?

16 A Assuming that's the first --

17 (Document displayed)

18 A Yes.

19 Q And isn't it true that the stock went up after that
20 report, and it stayed up for a full -- for the full next four
21 hours, after that report about the SEC probe.

22 A I can't -- possibly -- it seems -- I mean, you can draw
23 across there and it's -- looks like it's maybe not four hours,
24 but like an hour. And then it starts going down.

25 Q Thank you, Professor. I want to draw your attention to

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1 August 17th.

2 You were asked by Mr. Porritt about the *New York Times*
3 article that came out late on the night of August 16th. This
4 was based on an interview with Mr. Musk. Do you recall that?

5 **A** Yes.

6 **Q** This is in evidence as Exhibit 171. Okay?

7 **A** Again, I don't know what the exhibit number is.

8 **Q** I'm not asking you to remember the exhibit number. I'm
9 calling out so we can get it on it the screen.

10 **A** Okay, I'm sorry.

11 **Q** That would be quite a memory test. Okay? This is the
12 article you talked to Mr. Porritt about, right?

13 **A** Wait a second.

14 (Witness examines document)

15 **A** Yes, I believe so. I'm sorry, I caught the August 23rd
16 date on top. And I was confused. But yes. I assume that's
17 the date it was probably downloaded.

18 **Q** Okay. One thing you told the jury in your direct
19 examination about this article was that Mr. Musk had not told
20 the board about the tweet before he posted it. True?

21 **A** My recollection is that's in the text.

22 **Q** Okay. But that wasn't news.

23 **MR. ROSSMAN:** If we could go to Exhibit 27, in
24 evidence. Okay?

25 (Document displayed)

1 **BY MR. ROSSMAN**

2 **Q** On August 13th, there was a *New York Times* article
3 reporting previously: Tesla board surprised by Elon Musk's
4 tweet. Right?

5 **A** Well, but, this is from two people familiar, I mean, which
6 is different from Mr. Musk making the statement.

7 **Q** Okay. So the market knew from two people familiar that
8 the tweet took the board by surprise.

9 **A** I -- you know, I don't -- I can't -- first of all, I'm
10 here to read what the market -- how it reacted, as opposed to
11 tell you how it should act. But I'm just saying potentially
12 that's a different.

13 Here you've got two people familiar with the chain of
14 events on this, where on the August 16th interview, that was
15 from the horse's mouth.

16 **Q** Now, I don't need to quarrel with you about the horse's
17 mouth. It was not a surprise to the market that the tweet had
18 not been previewed to the board. True?

19 **A** Again, I -- I can't say. I just read from the article.

20 **Q** Okay. Now, another thing you say about the *New York Times*
21 article was that it -- it contained the sentence "It turned out
22 funding was far from secure."

23 **MR. ROSSMAN:** If we go we can go back to Exhibit 171.
24 And go to the second page.

25 (Document displayed)

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1 BY MR. ROSSMAN

2 Q You pointed out that sentence:

3 "But that funding, it turned out, was far
4 from secure."

5 That's something you mentioned in your direct, true?

6 A Yes.

7 Q There's no quotation mark around that statement
8 (Indicating), right?

9 A Um, again, it's in the article. Mr. Musk has --

10 Q Is there a quotation mark?

11 A There's no quotation mark in this interview with Mr. Musk.

12 Q Okay. There are lots of quotation marks in that article.
13 There are lots of statements that are quoted and attributed
14 directly to Mr. Musk. Not that one. Right?

15 A Again, I -- I --

16 Q Yes or no, sir.

17 A It's not quoted.

18 Q Okay.

19 A Or, it's not in quotations.

20 Q It's not in quotations, nor is it attributed to Mr. Musk,
21 right? That's just the reporter's characterization.

22 A You know, I don't know, it's right under -- yeah. It's
23 right under the question.

24 Q But you told the jury that this *New York Times* article was
25 really sort of the final revelation of the truth related to the

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1 fact that funding is not secured. That's what you said
2 yesterday. Right?

3 **A** Well, I -- it's -- it's evidence that that's the case.
4 We've also got the evidence of the price movement, the implied
5 volatility, and Mr. Brinkman's analyst report.

6 **Q** Okay. And Mr. Brinkman's analyst report's in evidence, by
7 the way. You're aware, sir, it doesn't mention the *New York*
8 *Times* article, the actual report.

9 **A** I'm trying to remember. I believe his testimony --

10 **Q** No, that's not what I asked you about. Pay attention to
11 my question.

12 **A** Okay.

13 **Q** In the analyst report, the analyst report itself that you
14 referenced, okay -- we don't need to pull it up for time, but
15 it's in evidence as Exhibit 23 -- it does not mention the *New*
16 *York Times* article?

17 **A** I don't recall. I'll take --

18 **Q** You're aware that it does mention the blog post?

19 **A** Say -- I'm aware of what? I don't recall.

20 **Q** I asked you a different question, Professor.

21 Are you aware that the analyst report from Mr. Brinkman
22 does specifically mention the blog post?

23 **THE COURT:** The 13th blog post? Which blog post?

24 **MR. ROSSMAN:** August 13th. Thank you, Your Honor.

25

1 BY MR. ROSSMAN

2 Q The August 13th blog post. Mr. Brinkman's analyst report
3 mentions --

4 A August 20th. Right?

5 Q Let me --

6 A I'm sorry.

7 Q Before -- before we drive the court reporter absolutely
8 mad, let me just put the question down, and then I'll give you
9 a chance to answer.

10 A I'm sorry.

11 Q Mr. Brinkman's analyst report, okay, that you point to,
12 specifically references the blog post. I just want to know
13 whether or not you're aware of that, as you sit here today.

14 A I -- I have a vague recollection, yes.

15 Q Very good. And on the 13th, you said as a result of the
16 blog post, the market knew that "Funding secured" was premature
17 at best. That was your phrase. Right?

18 A Yeah. I think we had that discussion yesterday.

19 Q Okay. Now, I want to actually look at the article for a
20 second. Okay? You remember what the question --

21 A Which, which article?

22 Q I'm sorry, I was doing this for the benefit of
23 Mr. Kotarski. Exhibit 171, the *New York Times* article on the
24 16th. Okay, and it will be on your screen momentarily.

25 (Document displayed)

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1 **Q** Do you remember what the question was that Mr. Porritt
2 asked you yesterday when you were talking about the *New York*
3 *Times* article?

4 **A** The specific question? I can't. I don't -- I don't want
5 to -- there were lots of questions all day yesterday. What was
6 the question?

7 **Q** Okay. Do you remember what the question was that you were
8 asked --

9 **THE COURT:** I think the witness says he doesn't --

10 **MR. ROSSMAN:** Fine. That was a precursor. Thank you,
11 Your Honor. I appreciate that.

12 **BY MR. ROSSMAN**

13 **Q** The question that's at 1691, Line 5 of the transcript:
14 "And what did this article say?"

15 Okay, very open-ended question. Right? Do you recall
16 that?

17 **A** Um, I recall speaking about the -- the article. What the
18 exact question was, I don't recall. But if that's what the
19 transcript says, that was the question.

20 **Q** And you gave testimony about the article. But in the
21 course of your testimony, you didn't tell the jury a single
22 fact about Mr. Musk's physical or emotional well-being.

23 Right?

24 **A** I don't think that's correct. I think I followed up that
25 discussion with -- in fact, I believe -- I don't have the

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1 transcript in front of me, but I believe that Mr. Porritt and I
2 have discussed that issue.

3 Q So the transcript will -- will tell us what actually
4 happened. But it's your testimony, as you sit here today, that
5 yesterday, in fact, you did in your direct testimony give
6 testimony about the article reporting on issues concerning
7 Mr. Musk's health and well-being?

8 A My recollection is that I -- I thought I talked about it;
9 I thought I was asked a question on the -- on that issue.

10 Q Okay. In fact, isn't the title of the article revealing?
11 "Elon Musk Details 'Excruciating' Personal Toll of Tesla
12 Turmoil"?

13 A That's the title, yes.

14 Q And if you look at the article itself, it goes through in
15 detail, okay, what that personal toll has been.

16 Okay (As read):

17 "In an hour-long interview with the *New York*
18 *Times* he choked up multiple times, noting
19 that he nearly missed his brother's wedding
20 this summer and spent his birthday holed up
21 in Tesla's offices as the company raced to
22 meet elusive production targets on a crucial
23 new model.

24 "Asked if the exhaustion was taking a toll on
25 his physical health, Mr. Musk answered 'It

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1 has not been great, actually. I've had
2 friends come by who are really concerned.'"

3 That was in the article. You didn't mention that
4 yesterday, right?

5 **A** The article I think is three or four pages.

6 **Q** Did you mention that yesterday?

7 **A** No, I don't think I mentioned this particular sentence.
8 Again my recollection -- and maybe I did -- is associated, you
9 know, with the health. But I -- this is -- I don't think he
10 would have wanted me to read the whole article.

11 **Q** And the article goes on, from there. It says board
12 members expressed concern not only about Mr. Musk's workload --
13 I'm sorry. Board members expressed concern about his workload.

14 It goes on. In the interview he demonstrated
15 extraordinary level of self-reflection and vulnerability,
16 acknowledging his myriad executive responsibilities are taking
17 a steep personal toll.

18 And if we go to the third page.

19 (Reporter clarification)

20 **MR. ROSSMAN:** Of course. I'm sorry, I didn't --

21 **THE COURT:** Say "quote" if you're quoting. Use the
22 word "quote" so the court reporter --

23 **MR. ROSSMAN:** Perfect, that's good. I couldn't hear
24 the reporter between the glass and the mask. Thank you.

25

1 BY MR. ROSSMAN

2 Q The article says, quote (As read):

3 "In the interview on Thursday, Mr. Musk
4 alternated between laughter and tears.

5 "He said he'd been working up to 120 hours a
6 week recently..."

7 "...Mr. Musk said he had not taken more than
8 a week off since 2001..."

9 And this one actually has quotation marks around it,
10 attributed to Mr. Musk:

11 "'There were times when I didn't leave the
12 factory for three or four days -- days when I
13 didn't go outside,' he said. 'This has
14 really come at the expense of seeing my kids.
15 And seeing friends.'"

16 End quote. It goes on, quote:

17 "Mr. Musk stopped talking, seemingly overcome
18 by emotion.

19 "He turned 47 on June 28, and he said he
20 spent the full 24 hours of his birthday at
21 work."

22 And this is a quote attributed to Mr. Musk:

23 "'All night -- no friends, nothing,' he said,
24 struggling to get the words out."

25 I'll pause there for a second.

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1 All that was reported by the *New York Times* on the evening
2 of August 16th, to the market. Right?

3 A Correct.

4 Q Now, you agree that Mr. Musk is a key man at Tesla. The
5 key man at Tesla. Correct?

6 A I'm not offering an opinion, but he is -- at this time he
7 was CEO and, I believe, chairman of Tesla.

8 Q You're willing to concede that he's important to Tesla?

9 A Again, I wasn't asked to offer an opinion on that, but,
10 you know, just -- I mean, yes. He's an important person at
11 Tesla.

12 Q And this information -- if there's news about Mr. Musk's
13 health and well-being, that could affect Tesla's stock price.
14 Right?

15 A News about his health and well-being, to the extent it's
16 material unanticipated news, would likely be reflected in the
17 stock price.

18 Q Okay. And if you look at the last quote, he writes
19 (As read):

20 "I thought the worst of it was over -- I
21 thought it was," he said. "The worst is over
22 from a Tesla operational standpoint." He
23 continued: "But from a personal pain
24 standpoint, the worst is yet to come."

25 *New York Times* reported Mr. Musk as saying that on the

1 morning of August 16th. True?

2 **A** Yes, assuming this is -- this is -- yes. This is what
3 that reads.

4 **Q** And let's -- and you, in your report, you list a number of
5 articles. You showed headlines of the articles. There were
6 articles, dozens and dozens and dozens of articles reporting on
7 this *New York Times* article (Indicating). Right?

8 **A** There were articles reporting on this, as well as the
9 issues associated with the going-private tweet. And indeed, I
10 think there were possibly even sources that suggested that, you
11 know, this interview was, in some sense, you know, a result of
12 the tweets, themselves, in that whole period.

13 **Q** Okay. I understand that's your opinion that you want to
14 give.

15 Let's take a look at what the articles were, that were
16 described in the *New York Times* article. Okay?

17 (Document displayed)

18 **Q** 1:23 a.m. there's a *Business Insider* article. This comes
19 from your appendix to your report, okay? *Business Insider*
20 article titled:

21 "The Most Difficult and Painful Year of my
22 Career: Tesla CEO Elon Musk Opens up About
23 Personal and Professional Struggles in a
24 Revealing Interview."

25 Do you see that?

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1 **MR. PORRITT:** Your Honor, is this being published to
2 the jury?

3 (Jury indicates in the affirmative)

4 **MR. ROSSMAN:** I don't believe it should.

5 **THE COURT:** It's being published?

6 **MR. PORRITT:** Your Honor, that's the second time this
7 is happening.

8 **MR. ROSSMAN:** That is not our intention. I have this
9 for the benefit of the witness. It should be --

10 **THE COURT:** All right, so we should not publish this
11 to the jury.

12 **MR. ROSSMAN:** I'm offering this for the witness, okay?

13 **BY MR. ROSSMAN**

14 **Q** Your report cited this headline in *Business Insider*,
15 right?

16 **A** Yes.

17 **Q** *Financial Times* published an article titled:

18 "Elon Musk Describes Excruciating Year at

19 Tesla."

20 Right?

21 **A** Yes.

22 **Q** CNN had an article, "Elon Musk: This has been the most
23 painful year of my career," right?

24 **A** Yes.

25 **Q** Went international. *London Evening Standard* published an

HARTZMARK - CROSS / ROSSMAN

1 article:

2 "Elon Musk interview: Tesla boss admits to
3 working 120 hours a week and struggling to
4 deal with 'excruciating' stress in tearful
5 tell-all."

6 Right?

7 **A** Yes.

8 **Q** And it continues. I could read dozens of these articles,
9 okay? That's what the news was reporting on about the *New York*
10 *Times* article that day. The headline of the story was about
11 Mr. Musk's emotional health. Right?

12 **A** The ones that you have shown us, yes.

13 **Q** And there are many more in your report; we don't have time
14 to read them all.

15 Now, okay, having seen the content of the *New York Times*
16 article, the title of the *New York Times* article, the headlines
17 of the articles reporting on the *New York Times* article, okay,
18 are you telling this jury that issues concerning the health and
19 well-being of Mr. Musk that were described in that article are
20 not material to investors?

21 **A** Well, again, I looked at the data. I looked at various
22 qualitative information. I don't know -- you know, there's
23 been no evidence that would demonstrate why you would see this
24 bounce-back in implied volatility, based on the health of
25 Mr. Musk.

HARTZMARK - CROSS / ROSSMAN

1 There were some, again, positive components in this as
2 well, in some sense. But there were two sides to this, and the
3 -- you know, I guess it's -- it's for the jury to decide how to
4 weigh it.

5 **Q** You can't stand here and tell us that it was not material.
6 That there were concerns being raised in this tearful interview
7 with the *New York Times* about Mr. Musk's well-being and health.

8 **MR. PORRITT:** Objection, vague.

9 **THE COURT:** Overruled.

10 **THE WITNESS:** First of all, I -- the --

11 **BY MR. ROSSMAN**

12 **Q** Yes or no, Professor? Are you saying it's immaterial or
13 are you saying it's material?

14 **MR. PORRITT:** Objection, Your Honor. Now that's
15 recharacterizing the question in a vague and ambiguous way.

16 **THE COURT:** Overruled.

17 You can answer the question whether you think that
18 information was material. I'll let you explain. But you
19 should answer yes or no.

20 **THE WITNESS:** Given the qualitative information that
21 you just provided, that is -- again, that would suggest that
22 again, with all those news -- and again, you gave a set of
23 curated headlines that would, based on my analysis, suggest
24 that it's -- you know, because the news stories were picking it
25 up, that it is important, the article.

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1 But what I would say is, well, those you read, and that's
2 the chronology that I put in my reports, give a headline. So I
3 don't know what the second line was or I don't know if that was
4 the headline and then there was, you know, discussion of the
5 other issues.

6 But, yes. It would suggest it's important information to
7 investors.

8 **BY MR. ROSSMAN**

9 **Q** Okay. And the headlines -- there are many more, okay?
10 The headlines that you cited in your report over and over and
11 over again, they're citing the health and well-being issues,
12 the personal toll on Mr. Musk. They're not -- those headlines
13 that we read were not talking about "Funding secured."

14 Right, sir?

15 **A** Those headlines were not.

16 **Q** Okay. Very good. Now, you remember you gave testimony
17 yesterday about what was the quintessential proof of what was
18 material to investors. Do you recall that?

19 **A** I don't know if it was a specific -- I said that, I
20 believe, a couple times. It probably related to a specific
21 example.

22 Can you refresh my memory on this --

23 **Q** I believe you were testifying about internal Tesla emails.
24 And in particular, one from a gentleman in Investor Relations,
25 Martin Viecha. Okay?

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1 And you said that a query from an investor -- in that
2 case, a Mr. Koney from Jennison -- asking about something, the
3 fact that the investor asked about it made it material.

4 "Quintessential proof" was your phrase. Right?

5 **A** It's not just -- just that, that I had -- had, you know,
6 the one email, or whatever. The idea that there was this
7 flurry of emails that came in asking questions suggested that
8 the lack of information about what "Funding secured" meant was
9 material, because it was important to investors.

10 **Q** Okay.

11 **MR. ROSSMAN:** Can we look at Exhibit 161, please.

12 (Document displayed)

13 **BY MR. ROSSMAN**

14 **Q** And this is another internal Tesla email. This is from
15 the gentleman in Investor Relations, Mr. Viecha. And he's
16 reporting on what he's hearing from investors about the *New*
17 *York Times* article. Right?

18 (Off-the-Record discussion between counsel)

19 **THE WITNESS:** I -- I don't recall if I've seen this.
20 Can I -- Your Honor, can I read it?

21 **MR. ROSSMAN:** 161 is in evidence, and we ask that it
22 be published.

23 **THE COURTROOM DEPUTY:** It is being published.

24 **MR. ROSSMAN:** It is being published. Thank you.

25 **THE COURT:** He needs to see it before he comments on

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1 it.

2 **MR. ROSSMAN:** I understand. I want to make sure the
3 jury is seeing it as the witness is seeing it.

4 **THE COURT:** Is it in the binder?

5 **MR. ROSSMAN:** It should be in the binder.

6 **THE WITNESS:** What -- if it's in the binder, then I
7 can go to -- what number is it?

8 **THE COURT:** 161.

9 (Witness examines document)

10 **THE COURT:** And is there a question pending?

11 **MR. ROSSMAN:** I think the witness just indicated he
12 wanted a second to see it before I ask about it.

13 **THE COURT:** 161, is it, Counsel?

14 **BY MR. ROSSMAN**

15 **Q** Have you had a chance to look at the exhibit now? It's
16 not very long.

17 **A** Okay. I didn't read it in great detail, but I will --
18 assuming what the question is, I'll answer it.

19 **MR. ROSSMAN:** Now, if we could have from the trial
20 transcript, 1664, please?

21 **BY MR. ROSSMAN**

22 **Q** I just want to remind you of testimony that you gave on
23 this, sir.

24 (Document displayed)

25 **Q** Okay. You were asked (As read):

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1 **"QUESTION:** What impact did this have on your
2 views on the materiality of the August 7th
3 tweets?"

4 And this is in reference to a Tesla internal
5 communication, in response to investor inquiries. And you said
6 (As read):

7 **"ANSWER:** This would suggest, again -- again,
8 this is the quintessential issue."

9 This is not -- I'm sorry. One second.

10 I have the wrong -- yes. 1664 -- no, I'm sorry. The
11 cite's wrong.

12 But you used that phrase, "quintessential." Right?

13 **MR. PORRITT:** Objection. What's -- I don't know what
14 the question is.

15 **MR. ROSSMAN:** That's okay.

16 **BY MR. ROSSMAN**

17 **Q** This is the testimony you gave yesterday.

18 **THE COURT:** But, the context. I'm not sure what the
19 context is now. What is "this"?

20 **BY MR. ROSSMAN**

21 **Q** The question is: Did you give this testimony?

22 **MR. PORRITT:** Objection --

23 **THE COURT:** It's not complete. It's not clear what
24 the "this" is. If you just ask him to repeat the testimony,
25 that's not --

HARTZMARK - CROSS / ROSSMAN

1 **MR. ROSSMAN:** Can we go to 104 -- can we go to 104,
2 please --

3 **THE COURT:** Excuse me.

4 **MR. ROSSMAN:** I'm trying to --

5 **THE COURT:** I understand. But let me talk, if you
6 would.

7 This is not complete. It's worthless. So give it
8 context.

9 **MR. ROSSMAN:** One second, Your Honor, because I don't
10 think -- the difficulty seems to be the --

11 (Off-the-Record discussion between counsel)

12 **MR. ROSSMAN:** Let me, if I may, I'll just take that
13 down and ask you the question generically, Professor, so we
14 don't have to fuss with the record, okay?

15 (Document taken off display)

16 **BY MR. ROSSMAN**

17 **Q** You agree with the statement that quintessential proof,
18 quintessential proof, okay, of something being material is
19 investors asking questions about it.

20 You agree with that statement. I believe that is the
21 essence of what you testified about yesterday.

22 **A** No. Proof? I don't know if I used that word at all.

23 **Q** You don't think you used the phrase "quintessential
24 proof"?

25 **A** Maybe I did.

HARTZMARK - CROSS / ROSSMAN

1 **Q** Okay.

2 **A** Certainly, important support.

3 **Q** You were not saying yesterday --

4 **A** I --

5 **Q** I'm sorry. Professor, please.

6 You were not saying yesterday that the fact that investors
7 were asking Tesla questions was proof that the information was
8 material?

9 **A** I -- I don't know if I used that. It's certainly --
10 again, as I've mentioned to the jury, I look at a bundle. It's
11 certainly -- you know, that type of email is quintessential
12 support for something being material. Whether that, in and of
13 itself, is proof, you would have to read it.

14 As I said, I didn't use those emails, alone, as support
15 for my position that the "Funding secured" is material.

16 **MR. ROSSMAN:** I now found the right reference. Can we
17 look at 1665, starting at Line 24, please. Okay, through 1666,
18 line, Line 7.

19 (Document displayed)

20 **BY MR. ROSSMAN**

21 **Q** Okay, testimony that you gave yesterday (As read):

22 **"QUESTION:** And what does this back-and-forth
23 between Tesla Investor Relations and these
24 investors and analysts tell you as an
25 economist?

HARTZMARK - CROSS / ROSSMAN

1 **"ANSWER:** Well, as I mentioned, materiality
2 from an economic perspective is -- does a mix
3 of information change that would motivate
4 buyers and sellers to take action. And this
5 is -- again, this is the quintessential proof
6 that this is -- that this is material
7 information because investors are interested
8 in it."

9 Okay?

10 **A** Yeah.

11 **Q** Was that the truthful testimony that you gave yesterday,
12 sir?

13 **A** Yes, probably a little over -- as I just mentioned that is
14 in support of a by -- just by itself, you know. I -- I
15 wouldn't want to -- you know, if everything else is on the
16 opposite side, I don't, necessarily. But yes, I stand by that.

17 **Q** And if it's quintessential proof for Mr. Porritt, it's
18 quintessential proof for me?

19 **A** I'm not sure what you mean by that question.

20 **Q** Do you hold -- do you have a different standard if
21 something is quintessential proof because investors relied on
22 it?

23 Would you not apply that same rule when it works against
24 plaintiff's case?

25 **A** Again, as I said, it's -- it's strong support.

HARTZMARK - CROSS / ROSSMAN

1 **Q** Okay. Well, let's take a look at 161, with that in mind.
2 Okay?

3 **MR. ROSSMAN:** Exhibit 161, please.

4 (Document displayed to the Witness)

5 **BY MR. ROSSMAN**

6 **Q** Okay. And if you look, and this is -- if we look at the
7 second page of this email message from Mr. Viecha who's
8 responding to queries from large investors about the *New York*
9 *Times* article, he writes (As read) "

10 "Worst is yet to come: Elon's statement in
11 the *New York Times* that 'But from a personal
12 pain standpoint the worst is yet to come'
13 spoked some people, as this statement was
14 understood in many different ways. Jennison"
15 -- Mr. Koney's firm -- "told me that they
16 weren't sure if they should just, 'run for
17 the hills' (divest)."

18 Stop there for a second. "Divest" means sell all their
19 shares. Right?

20 **A** Yes.

21 **Q** This is quintessential proof that concerns about
22 Mr. Musk's health and well-being were material to investors,
23 and you didn't describe that to the jury. Right?

24 **A** Again, I thought I had -- had some discussion. But this
25 is -- yes, there's -- this is -- and I wouldn't deny that his

HARTZMARK - REDIRECT / PORRITT

1 health is material. Whether it's material, unanticipated, I
2 didn't -- didn't say.

3 **Q** And your damages analysis takes no account of Mr. Musk's
4 health and well-being, and the impact of the *New York Times*
5 reporting on that on the night of August 16th. Correct?

6 **A** To the extent that it's independent of the issues
7 associated with the tweet, I did not -- what economists call
8 "parse" it. I didn't separate it out.

9 **MR. ROSSMAN:** Thank you, sir. I have no further
10 questions.

11 **THE COURT:** All right. Thank you.

12 Redirect?

13 **REDIRECT EXAMINATION**

14 **BY MR. PORRITT**

15 **Q** Dr. Hartzmark.

16 **A** Good morning.

17 **Q** I'll go straight on to the point that you were just
18 discussing with Mr. Rossman regarding the mental health of Elon
19 Musk, and the market's knowledge of those issues in August --
20 on August 17th, 2018.

21 Had there been prior reporting about Mr. Musk's mental
22 health in the media?

23 **A** Yes.

24 **Q** And that's before August 17th?

25 **A** Yes.

HARTZMARK - REDIRECT / PORRITT

1 Q Okay. And, indeed --

2 MR. PORRITT: If I can call up Exhibit 426,
3 Your Honor, I would --

4 THE COURT: Okay.

5 MR. PORRITT: Is this admitted?

6 (Off-the-Record discussion between counsel)

7 THE COURT: Is this previously admitted?

8 MR. PORRITT: No, Your Honor. But we would -- at this
9 point we would move to admit it. It's the *New York Times*
10 article.

11 THE COURT: Any objection?

12 MR. ROSSMAN: No further objections, Your Honor.

13 THE COURT: Admitted.

14 (Trial Exhibit 426 received in evidence.)

15 (Document displayed)

16 BY MR. PORRITT

17 Q Do you see that this is a *New York Times* article on --
18 August 15th, in fact. Do you see that?

19 A Yes.

20 Q And in fact, this is a *New York Times* article devoted
21 absolutely to Elon Musk's mental health. Correct?

22 (Witness examines document)

23 A It's -- it emphasizes, yes, his mental health.

24 Q Okay. It even contains information from a psychologist
25 regarding Mr. Musk's mental health in the context of the

HARTZMARK - REDIRECT / PORRITT

1 tweets. Isn't that correct?

2 **A** Yes. It's in response, I believe, to the tweet.

3 **Q** All right. So this is from the *New York Times*, the same
4 newspaper that then published what you have discussed with
5 Mr. Rossman, Exhibit 171. Correct?

6 **A** Yes.

7 **Q** And it's the day prior. Correct?

8 **A** Yes. I mean, and that's why, when I answered
9 Mr. Rossman's question, I agreed that his health is material,
10 but for, as I discussed, for an efficient market. An efficient
11 market is where a price rapidly reacts to material
12 unanticipated or new information.

13 (Document displayed)

14 **A** And this was already out. And I believe there's --
15 there's been -- there was other, you know, before this,
16 discussion, or at least rumor and innuendo.

17 **Q** And I think the news that Mr. Musk had been working hard,
18 sleeping at the factory, under stress with the Model 3 rollout,
19 that was all known to the market before August 16th, 2018.
20 Isn't that true?

21 **A** That's my understanding, yes.

22 **Q** Okay. So you would expect that to be incorporated into
23 the stock price long before August 7, 2018. Would that be --

24 **MR. ROSSMAN:** Objection, leading.

25 **THE COURT:** Sustained.

HARTZMARK - REDIRECT / PORRITT

1 **BY MR. PORRITT**

2 **Q** Okay. Well, how would that prior information about the --
3 would that prior information before August 7th be incorporated
4 into the stock price?

5 **A** Yes. Again, it's -- it's material unanticipated or new
6 information that causes changes.

7 **Q** And then, if you look to Exhibit 161, what you've just
8 been discussing with Mr. Rossman, --

9 (Document displayed)

10 **Q** -- it contains Martin Viecha's feedback from a number of
11 conversations with investors. Isn't that correct?

12 **A** Yes. He lists, up in the first sentence, a number of
13 investors that he had I guess either in person, or had spoke to
14 on the phone.

15 **Q** And Mr. Rossman pointed you to certain aspects of the
16 feedback that he'd received. In fact, Mr. Viecha has four,
17 four points in Exhibit 161, plus some collective advice.

18 Isn't that what the document says?

19 **A** Um, yes. It -- well, even in the second sentence it talks
20 about some, but my -- if you could scroll it, I think there at
21 least were four. Second page.

22 (Document displayed)

23 **MR. PORRITT:** Keep scrolling.

24 **THE WITNESS:** Yeah, No. 4 -- yes, four, and then some
25 subcategories.

HARTZMARK - REDIRECT / PORRITT

1 **BY MR. PORRITT**

2 **Q** All right. And one of those is privatization. Do you see
3 that?

4 **A** Yes.

5 **Q** What is your understanding of what Mr. Viecha is referring
6 to there about the privatization?

7 **A** Well, this would be associated with the -- Mr. Musk's
8 tweet, "Am considering taking Tesla private at \$420. Funding
9 secured."

10 **Q** Okay. And looking at -- looking at Point 2, talks about
11 recent Twitter and media communication? Is that what the
12 heading says?

13 (Witness examines document)

14 **A** Yes.

15 **Q** Okay. And what was the most recent Twitter and media
16 communication concerning from Elon Musk on August 9th -- before
17 August 19, 2018?

18 **A** The -- say that, I didn't hear the --

19 **Q** What had been the most recent Twitter and media
20 communication from both Elon Musk and Tesla prior to August 19,
21 2018?

22 (Reporter clarification)

23 **BY MR. PORRITT**

24 **Q** 19th, 2018.

25 **A** Well, that some investors were worried that the media

HARTZMARK - REDIRECT / PORRITT

1 coverage could negatively impact demand for their products.
2 Which is the type of, again, consequential harm that I
3 discussed yesterday.

4 **Q** Were the most recent tweets by Mr. Musk concerning the
5 going-private transaction?

6 **A** Well, those -- that's -- that's my recollection.

7 **Q** Right.

8 (Documents taken off display)

9 **Q** Now, if we could also look at Exhibit 33, talking about
10 information that was already known in the market.

11 (Document displayed)

12 **Q** Do you have that in front of you?

13 **MR. PORRITT:** Does the jury have that?

14 (Members of the Jury indicate in the affirmative)

15 **THE COURT:** Is that in evidence?

16 **MR. PORRITT:** I believe it's in evidence.

17 **MS. TRIPODI:** No.

18 **MR. PORRITT:** Your Honor, we would move it at this
19 point. It's an analyst report, August 8.

20 **MR. ROSSMAN:** 33? No objection.

21 **THE COURT:** Admitted. You may publish.

22 (Trial Exhibit 33 received in evidence.)

23 (Document displayed)

24 **BY MR. PORRITT**

25 **Q** And is this a report that you've seen before?

HARTZMARK - REDIRECT / PORRITT

1 **A** Yes, it's one of -- again, I said there was a flurry of
2 analyst reports after the tweets. This is one of them.

3 **Q** And talks about in this context -- in this analyst report,
4 does Evercore mention that the concept of going private was not
5 a new -- not new for Elon Musk?

6 **A** My recollection is, yes, that there is -- there's a
7 mention in terms of his wanting to take the company private,
8 that that was -- was well known to the market.

9 **Q** All right.

10 **MR. PORRITT:** We can take that down.

11 (Document taken off display)

12 **MR. PORRITT:** And then if we can pull up Exhibit 8,
13 please.

14 (Document displayed)

15 **BY MR. PORRITT**

16 **Q** We have had some questioning about this tweet, correct?

17 **A** Yes.

18 **Q** Okay. Did you know whether Elon Musk testified regarding
19 his intention when he drafted this tweet in two sentences?

20 **A** Um, I --

21 **MR. ROSSMAN:** Objection to the characterization.

22 **THE COURT:** I'm sorry, what is the question?

23 **BY MR. PORRITT**

24 **Q** Do you recall Mr. Musk testifying about how this -- how
25 this tweet should be read in connection with the two sentences?

HARTZMARK - REDIRECT / PORRITT

1 **A** I -- I believe my recollection is they should be read in
2 combination, together.

3 **Q** Right. Thank you. And how did that affect your analysis
4 of this tweet?

5 **MR. ROSSMAN:** Objection.

6 **THE COURT:** Overruled.

7 **THE WITNESS:** It's as I stated yesterday, I looked at
8 it as an interwoven bundle and that, you know, "Funding
9 secured" would color the previous sentence.

10 **BY MR. PORRITT**

11 **Q** And then I think you were asked yesterday about the
12 statistical significance of the decline in Tesla's stock price
13 from August 7th to August 13th. Do you recall that
14 questioning?

15 **A** Yes.

16 **Q** And I think you wanted to explain your answer in response
17 to that questioning, but Mr. Rossman would not let you. But,
18 how would you like to expand on your answer regarding the
19 statistical significance of the decline in Tesla's stock price
20 from August 7th to August --

21 **MR. ROSSMAN:** Objection, vague, Your Honor.

22 **THE COURT:** Overruled.

23 **THE WITNESS:** The timeline in the price over the
24 corrective period, from August 7 to August 17, to the extent
25 that it's linked to the material misrepresentation means,

HARTZMARK - REDIRECT / PORRITT

1 itself, especially given, again, the qualitative analysis, that
2 the statistics associated with it are really a secondary issue.

3 And so the idea that there have to be individual days that
4 are significant is not -- is certainly something I looked at,
5 and is something you should look at. But you have to look at
6 the whole picture, especially in a period when there is
7 tremendous leakage.

8 I mean, this was a period -- I liken it to, like,
9 dripping, drip, drip, drip. I mean, and had it taken -- had it
10 all happened at one time, it would have been statically
11 significant.

12 **Q** And this slow decline, the "drip, drip" you've talked
13 about, that was preceded by the statistically significant
14 increase in Tesla's stock price following the tweets, isn't
15 that correct?

16 **A** Yes. And again, that's the critical issue. This is an
17 unusual case, if I can. Usually you'll see drip, drip, drip in
18 the front side, and those are material misrepresentations, but
19 they're not statistically significant. And then you see the
20 disclosure of one big -- the cumulation of all those drips just
21 spills out, and that is material, and that is statistically
22 significant. And because it's linked to that incline, over
23 time, it means that the incline would be statistically
24 significant. Or not stati- -- would be material.

25 **Q** And that's different from this case, you're saying?

HARTZMARK - REDIRECT / PORRITT

1 **A** Well, this is almost a mirror image where we have the sort
2 of the water being put into a sink, and then it dripping out
3 through a leaky pipe.

4 **Q** Now, there was some testimony yesterday regarding your
5 calculation of the total artificial inflation that you
6 calculate in the -- in the Tesla stock price during the class
7 period, working off the but-for price of 312.90. Do you recall
8 that?

9 **A** Yes.

10 **Q** And I think there was some testimony about how that
11 related to the adjusted price that you used that was derived
12 from your event study. Do you recall that?

13 **A** Yes.

14 **Q** Okay. And you testified that it could lead -- using
15 adjusted prices could lead to greater inflation. And then I
16 think you also testified about maybe lower inflation.

17 I was confused by that. So, hoping you could clarify.

18 **A** Yes. The 312.90 but-for price is the but-for price at the
19 end of the period, after all of the market effects. And it's
20 actually -- it's a conservative price.

21 I don't know if you can put up the -- the --

22 **Q** Would you like Slide 19 or Slide 11?

23 **A** What's that?

24 **MR. PORRITT:** Actually, Derek, can you put up Slide 19
25 and Slide 11, please.

HARTZMARK - REDIRECT / PORRITT

1 **THE WITNESS:** Or the abnormal.

2 (Document displayed to Witness)

3 **THE WITNESS:** Yeah. And then if you could put up the
4 abnormal returns as well.

5 **MR. PORRITT:** That's Slide 19.

6 (Document displayed)

7 **THE WITNESS:** You know, after, you know, after --
8 looking at all of this, the but-for price is the but-for price
9 at the end of the period. And if you look at the slide on your
10 right and the adjusted price, the difference in any measure of
11 the adjusted price is truly the harm to the investors.

12 And if you -- relative -- if they hold it over the whole
13 period, 379 less 312, 370 less 312.

14 **MR. PORRITT:** One second. I don't think this is being
15 published to the jury. Can we publish to the jury, please?

16 **THE COURT:** All right.

17 **THE COURTROOM DEPUTY:** It's in. It's being published.

18 **MR. PORRITT:** All right. Thank you.

19 (Document displayed)

20 **BY MR. PORRITT**

21 **Q** Sorry, Dr. Hartzmark. Perhaps you could just repeat that.
22 Sorry.

23 **A** Yeah. The -- I mean, to me, I actually -- I think I made
24 a mistake here in my cut-and-paste. And that's what I admitted
25 to Mr. Rossman yesterday.

HARTZMARK - REDIRECT / PORRITT

1 **Q** All right.

2 **A** That the stock price in the first column on your left
3 is -- should be the adjusted price. And the but-for price is
4 the end-of-the-period but-for price. And on any given day, the
5 total artificial inflation would be greater than what we had
6 here.

7 And it's conservative to do it at 312.90 and hold that
8 constant, but the inflation would be far greater. And one way
9 you can see that is that I have inflation in this particular
10 graph, on August 16th, 2018, of 22.55. And if you go over to
11 the right side and look at the very right side there, between
12 the 16th and the 17th, you've got \$344, and the stock drops by
13 \$30. And the abnormal return is actually greater than the
14 return, which means that the inflation that came out or the
15 harm to investors after accounting for outside influences was
16 over \$30.

17 And so needless to say, if you look at the -- if you put
18 in the adjusted price, less 312.90, you would get the
19 inflation. If you -- if you were to substitute 340 for 335.45,
20 you would have inflation at about \$30, which is the measure.
21 But, to be conservative, I held this but-for price constant.

22 **MR. ROSSMAN:** Objection, Your Honor. Move to strike.
23 That is outside of the scope of the opinion that the expert has
24 given in this case. He's offering a new opinion on the stand,
25 right now.

HARTZMARK - REDIRECT / PORRITT

1 **MR. PORRITT:** This isn't a new opinion. He's
2 explaining his existing opinion, Your Honor.

3 **THE COURT:** Overruled.

4 **MR. PORRITT:** This was exactly covered by
5 cross-examination.

6 **THE COURT:** Overruled.

7 **BY MR. PORRITT**

8 **Q** So, just so I understand your testimony correctly, if you
9 used -- on the chart on the left, if you used actual --
10 adjusted prices on the left-hand column for all those stock
11 prices, the -- first of all, the 66.67, that would stay the
12 same, wouldn't it? That's the price?

13 **A** That would stay identical. That is the basis for the
14 inflation.

15 **Q** Right. And the zero, it's always zero on August 17th,
16 isn't that correct?

17 **A** Yeah, that is correct, yes.

18 **Q** All right. So 66.67 is the maximum amount of artificial
19 inflation that was introduced to the stock price as a result of
20 the tweets, in your opinion. Correct?

21 **A** Yes.

22 **MR. ROSSMAN:** Objection, leading.

23 **THE COURT:** Overruled. But, watch the leading
24 questions, please.

25 **MR. PORRITT:** Thank you, Your Honor. I'm trying to

HARTZMARK - REDIRECT / PORRITT

1 get to the material quickly.

2 **THE COURT:** Yep.

3 **MR. PORRITT:** So, request a bit of leeway on this
4 regard.

5 **BY MR. PORRITT**

6 **Q** And if -- the numbers in between, what would happen to
7 those numbers, each of those numbers, if you used the adjusted
8 price in the left-hand column and deducted 312.90 from it?

9 **A** Every day, you can seeing that if you take every day --
10 8-8, the adjusted price is 370.60 and the stock price is
11 370.34. On 8-9, the adjusted price is 353.31 and the actual
12 price is 352.45. Every day, the adjusted price is above the
13 stock price.

14 And so if you look at the adjusted price relative to the
15 end-of-period but-for price, total artificial inflation would
16 be higher on every day.

17 **Q** And what impact would that have on the overall damages
18 that defendants would pay, if found liable in this case?

19 **A** It would have substantial impact.

20 **Q** And would it increase, or decrease?

21 **A** Oh, I'm sorry. It would -- it would have substantial --
22 it would substantially increase the damages.

23 **Q** Okay. So the numbers presented in your report, which are
24 presented here today, and yesterday, are a conservative measure
25 of the damages as a result of the tweets.

HARTZMARK - REDIRECT / PORRITT

1 Is that correct?

2 **A** Yes.

3 **Q** Okay. And the 312.90, just to be clear, the 312.90, does
4 that -- is that the price that takes into account the market
5 effect of the stock during the corrective interval, the period
6 from August 7th to August 17th?

7 **A** Yes, it's the -- it's the final but-for price on
8 8-17-2018.

9 **Q** Right. So it -- if I understand correctly, does it
10 incorporate the market effects from -- the entire period, from
11 August 7th through to August 17th, 2018?

12 Is that correct?

13 **A** Yes.

14 **Q** Okay. And Mr. Rossman asked you about what happened if
15 someone bought on August 7th and then sold, I think in his
16 example, on August 13th. Do you recall that testimony?

17 **A** Oh, yes.

18 **Q** Okay. And under his model, as I understand your
19 testimony, that -- that investor, the initial investor, would
20 recover his damages. The difference between the inflation when
21 he bought, 66.67, and the inflation on when he sold, which is
22 43.51. Is that correct?

23 **A** Yes.

24 **Q** Okay. But the person who bought from him on August 13th,
25 that person is a class member, too. Correct?

HARTZMARK - REDIRECT / PORRITT

1 **A** Yes. He's a purchaser, and --

2 **Q** Right.

3 **A** -- he overpays for it.

4 **Q** Correct. And if that investor held all the way to
5 August 17th, you estimate his damages to be \$43.51. Isn't that
6 correct?

7 **A** Based on, yes, this exhibit.

8 **Q** All right. So his damages of 43.51 and the damages of
9 23.16, which you calculated -- Mr. Rossman calculated, what
10 does that add up to?

11 **A** Say that again? I'm sorry.

12 **Q** So the damages of that second purchaser at 43.51 and the
13 damages that Mr. Rossman calculated for the first purchaser of
14 \$23.16, both of those, both of those amounts have to be paid by
15 defendants in this case as damages, if found liable. Correct?

16 **A** Yes. There's -- no matter what happens, whether there's a
17 purchase at the beginning, purchase in the second day, third
18 day, it's always 66.67 per any damaged share.

19 **Q** Correct. Now, we had some testimony regarding the
20 existence of consequential damages following -- in connection
21 with the August 13th blog post this morning. Do you recall
22 that?

23 **A** Yes.

24 **Q** Okay. Could you explain, in the event that the -- you
25 know, in terms of the effect of the August 13th blog post on

HARTZMARK - REDIRECT / PORRITT

1 the information available to the market, what that means in
2 terms of consequential -- the consequential harm that you
3 identified in your report?

4 **A** Well, again, in this particular case, with respect to the
5 blog post, it's -- it's -- without being confirmatory, it adds
6 uncertainty. And as I mentioned, uncertainty is sort of the
7 kryptonite of investors.

8 **Q** And you'd talked about -- you had some testimony regarding
9 confounding information coming out regarding -- on August 16th,
10 some about Model 3 production?

11 Do you recall that testimony?

12 **A** Yeah, vaguely.

13 **Q** Well, that was this morning, right?

14 Do you recall that?

15 **A** Yeah.

16 **Q** Do you examine in detail these reports, this confounding
17 information that came out on August 16th regarding Model 3
18 production?

19 **A** Yes. And as I mentioned, I also did statistical tests.

20 **Q** Okay. And was that all described in the report that you
21 submitted in this case?

22 **A** Yes. In fact, I think it was -- we were citing to the
23 report.

24 **Q** All right. Mr. Rossman didn't show you those pages in
25 your report, did he?

HARTZMARK - REDIRECT / PORRITT

1 **A** Not -- just the paragraph in the footnotes.

2 **Q** Right. And, in fact, the footnote referred to another
3 seven paragraphs in your report discussing that exact -- just
4 that one disclosure. Isn't that correct?

5 **A** Um --

6 **Q** I'll represent that the --

7 **A** Okay. I can't recall.

8 **Q** Okay. And in connection with the -- those confounding
9 information, you did both statistical quantitative analysis and
10 qualitative analysis. Isn't that correct?

11 **A** With respect to the -- which --

12 **Q** Confounding information.

13 **A** Well, yes, I would -- started with the -- well, it sort of
14 went back and forth. You would start by looking and going
15 through the information, then doing the statistical analysis,
16 and then trying to examine other information, you know.

17 So for example, even if you found something that is
18 statistically significant, you would then look to see, you
19 know: Okay, did it come out with something else? Like, you
20 know, is it one line in a three-page article? Or -- and is it
21 picked up, say, by analysts afterwards, or other news
22 organizations?

23 Yeah. You would look at all of that information. As I
24 told you, you look at it as a basket.

25 **Q** And what was your conclusion after doing all that analysis

HARTZMARK - RECROSS / ROSSMAN

1 regarding those August 16th news stories about the Model 3
2 production that Mr. Rossman referred you to?

3 **A** Well, the Model 3 production issues, it was -- it was not
4 material, based on the basket of factors that I examined.

5 **Q** Okay.

6 **MR. PORRITT:** Thank you, Mister -- Dr. Hartzmark.
7 Nothing further at this stage.

8 **THE COURT:** All right. Thank you.

9 Recross?

10 **MR. ROSSMAN:** Just a couple, Your Honor.

11 **RECROSS-EXAMINATION**

12 **BY MR. ROSSMAN**

13 **Q** You referred to Exhibit 426, this is the *New York Times* --
14 if we could put it up?

15 This was not an interview, Exhibit 426. This was a New
16 York Times article.

17 **MR. ROSSMAN:** Can we have 426, please?

18 **THE COURT:** Is this in evidence?

19 **THE COURTROOM DEPUTY:** It is.

20 **MR. ROSSMAN:** It was moved in by plaintiffs.

21 (Document displayed)

22 **BY MR. ROSSMAN**

23 **Q** This *New York Times* article was not an interview of
24 Mr. Musk. It was other people speculating about Mr. Musk.
25 Right?

HARTZMARK - RECROSS / ROSSMAN

1 **A** Yes. That's sort of, I guess, the public speculation and
2 rumor.

3 **Q** Right. It's not what you call "the horse's mouth," not
4 information from the horse's mouth. Right?

5 **A** That's correct.

6 **Q** And you've shown us no evidence that there was any
7 investor reaction to this article. Right?

8 **A** This article happened on the -- it was issued, I believe,
9 on the 15th. And if my recollection is correct, the stock was
10 relatively flat on the 16th.

11 **Q** On the 16th. Thank you.

12 And is your rule that if something is already known, then
13 reporting on what's already known is not material?

14 **A** It depends. The issue is in an efficient market, material
15 unanticipated information is rapidly reflected in the price.
16 So you can have material information that is not -- that is
17 already known, so it's not -- it's not unanticipated --
18 double-negative -- and that would -- you wouldn't expect that
19 to show up.

20 It really depends, again, if it's a mirror image or not
21 of, you know, what was out there, and incorporated in the
22 price.

23 **MR. ROSSMAN:** Can we have Exhibit 1008?

24 And I'd ask that this be moved into evidence.

25 **THE COURT:** Any objection?

HARTZMARK - RECROSS / ROSSMAN

1 **MR. PORRITT:** No objection, Your Honor.

2 **THE COURT:** Okay, admitted.

3 (Trial Exhibit 1008 received in evidence.)

4 (Document displayed)

5 **BY MR. ROSSMAN**

6 **Q** Whatever information is in this *New York Times* article is
7 known to the market by the date August 15, 2008 [sic], is that
8 right?

9 **A** Say that again?

10 **Q** Information in this *New York Times* article on August 15th,
11 2008, you would agree with me, is already known to the market
12 by that date?

13 **A** By the date of August 15th?

14 **Q** Yes, sir.

15 **A** Oh, it's -- it's -- yeah. If it is, for example -- I
16 don't know what time it was issued, but assuming -- let's
17 assume it was issued before the market opened on August 15th --
18 you would expect it to get incorporated into the price.

19 **Q** Okay. Could we look at Exhibit 161, please.

20 (Document displayed)

21 **Q** And Exhibit -- oh, I'm sorry. Yeah, Exhibit 161. And
22 turn to the second page.

23 You were asked by Mr. Porritt about the subject
24 privatization? Do you see that?

25 (Document displayed)

HARTZMARK - RECROSS / ROSSMAN

1 **A** No. 4, there? Yes.

2 **Q** No. 4. Okay.

3 Investors aren't asking -- after the *New York Times*
4 article, they're not asking about "Funding secured," right?

5 **A** It's not mentioned in this, this paragraph, but it's
6 talking about the going-private.

7 **Q** Thank you. Thank you.

8 And if I understood your testimony from questions on
9 redirect, so, you fix to -- you admitted that there's a mistake
10 in all your numbers. And your fix --

11 **MS. TRIPODI:** Objection, Your Honor. That misstates
12 the testimony.

13 **THE COURT:** Hold on. Yeah, that is an overstatement.

14 **MR. ROSSMAN:** He said a mistake in his testimony, just
15 now.

16 **THE COURT:** Yeah, but you said all his numbers.
17 You're talking about a particular column.

18 **BY MR. ROSSMAN**

19 **Q** Okay. With respect to your numbers for artificial
20 inflation, okay, I've --

21 **MR. PORRITT:** Objection. That's not his testimony,
22 either.

23 **MR. ROSSMAN:** He said there was --

24 **THE COURT:** Let him ask the question.

25 **MR. ROSSMAN:** All right.

HARTZMARK - RECROSS / ROSSMAN

1 **BY MR. ROSSMAN**

2 **Q** I believe, okay, you told me that your numbers for
3 artificial inflation needed to be adjusted, yesterday. And
4 today you said you made a mistake in your report. I think you
5 said "made a mistake in my cut-and-paste."

6 **MR. PORRITT:** Objection. Misstates testimony.

7 **THE WITNESS:** Yeah, I mean --

8 **THE COURT:** Overruled.

9 **THE WITNESS:** The -- what I said is that you would
10 want to look at the -- the adjusted price -- at the adjusted
11 price on any day, less the end-of-period but-for price. But
12 that to be conservative, I used the end-of-period but-for price
13 to estimate it, which, in essence, understates inflation every
14 day.

15 **BY MR. ROSSMAN**

16 **Q** Okay. And in response to questions about a potential
17 investor buying on the 7th and selling on the 13th, you recall
18 Mr. Porritt asked you about that, you say: Well, a mistake
19 with respect to that investor's damages would be made up with
20 respect to a mistake involving another investor's damages who
21 bought on the 13th.

22 Do you recall giving that testimony a couple of minutes
23 ago?

24 **MR. PORRITT:** Objection. That misstates his
25 testimony.

HARTZMARK - RECROSS / ROSSMAN

1 **THE WITNESS:** No, no --

2 **THE COURT:** Hold on. Sustained. That wasn't the way
3 it was --

4 **BY MR. ROSSMAN**

5 **Q** Do you recall giving testimony in response to that
6 question? That if there were a mistake regarding an investor's
7 damages who bought on the 7th and sold on the 13th, there would
8 also be a mistake for an investor who bought on the 13th and
9 sold later, but that the total would add up to \$66.67?

10 **MR. PORRITT:** Objection. Again, that totally -- that
11 misstates his testimony.

12 **THE COURT:** Sustained.

13 **BY MR. ROSSMAN**

14 **Q** Okay. You recall giving --

15 **MR. ROSSMAN:** My question was not what the testimony
16 was. And maybe I can try to resolve the objection, Your Honor.
17 Okay?

18 **THE COURT:** Good.

19 **BY MR. ROSSMAN**

20 **Q** You recall giving testimony about that example, an
21 investor who bought on the 7th, sold on the 13th, and another
22 investor who bought on the 13th and sold later.

23 Do you recall giving testimony about those questions?

24 **A** Yes. The idea that each share that's traded within the
25 period would have the full \$66.67.

HARTZMARK - RECROSS / ROSSMAN

1 **Q** Okay. To each individual investor, it wouldn't matter
2 that you got the total right; it would matter that they got the
3 numbers right for each individual investor. Right?

4 **A** I don't understand the question.

5 **Q** Well, for each individual investor, you were -- is it --
6 the numbers that you currently have on your chart, okay, for
7 artificial inflation, aren't correct with respect to an
8 investor who bought on the 7th, sold on the 13th. Isn't that
9 true?

10 **MR. PORRITT:** Objection, Your Honor. I don't think
11 that's his testimony.

12 **THE COURT:** Overruled. Overruled.

13 You can answer.

14 **THE WITNESS:** Yeah, I mean, the numbers are --

15 **MR. ROSSMAN:** (Inaudible)

16 **THE WITNESS:** -- a conservative measure of inflation.
17 It's my understanding that the -- I don't know. Your Honor,
18 can I say what the jury will be determining?

19 **THE COURT:** No. I think you should just answer this
20 question.

21 **THE WITNESS:** Yeah. The numbers are the -- the
22 numbers, if you put -- what I said is if you put in that column
23 the -- the numbers for the, um, adjusted stock price, the
24 inflation at every level goes up. And it does change.

25 And that's something I think the jury should understand.

HARTZMARK - RECROSS / ROSSMAN

1 **BY MR. ROSSMAN**

2 **Q** Okay. An investor in that example who bought on the 13th,
3 using your numbers -- bought on the 13th and sold later, using
4 your numbers, those numbers, that inflation could also be wrong
5 for that investor.

6 **A** I -- I don't understand the question.

7 **Q** Using your numbers for artificial inflation, if an
8 investor bought on the 13th, would that also -- could that also
9 be wrong for that investor?

10 **A** It would be different. I don't want to say it's wrong.

11 **Q** Okay. So is it your opinion, Professor, that it's okay to
12 get the numbers wrong for those two investors, as long as the
13 totals add up?

14 **MR. PORRITT:** Objection, Your Honor.

15 **BY MR. ROSSMAN**

16 **Q** Is that your opinion?

17 **THE COURT:** Overruled.

18 **THE WITNESS:** Again, I've shown that you could do it
19 and maximize it, or you could do a conservative but-for price.

20 **BY MR. ROSSMAN**

21 **Q** As long as there are damages, right?

22 Is that your answer?

23 **MR. PORRITT:** Objection.

24 **THE WITNESS:** I, again, don't understand the question.

25 **THE COURT:** Sustained, on that question.

1 **MR. ROSSMAN:** No further questions.

2 **THE COURT:** Okay, thank you.

3 Anything further?

4 **MR. PORRITT:** Nothing further, Your Honor.

5 **THE COURT:** All right. Thank you.

6 Dr. Hartzmark, you are excused. You may step down.

7 **THE WITNESS:** Thank you.

8 (Witness excused)

9 **THE COURT:** All right. This is a break -- is there
10 any further witnesses from plaintiffs?

11 **MR. PORRITT:** At this point, plaintiff rests,
12 Your Honor.

13 **THE COURT:** All right. The plaintiff rests, and this
14 is a good point to take our 20-minute break. And we'll return
15 in 20 minutes.

16 Thank you.

17 **THE COURTROOM DEPUTY:** All rise for the jury.

18 (Jury excused)

19 (The following proceedings were held outside of the
20 presence of the Jury)

21 **THE COURT:** All right. So that works out.

22 Make your motion.

23 **MS. THOMPSON:** Ellyde Thompson for defendants.

24 Defendants move for judgment as a matter of law as to all
25 claims and all defendants.

PROCEEDINGS

1 Your Honor, we are filing a brief with all the bases for
2 our grounds for judgment as a matter of law. I would like to
3 point the Court particularly to Pages 3 through 7 of our brief
4 related to the Rule 20(a) control person liability.

5 Here, we think that the Court should, at this juncture
6 before defendants begin their case, dismiss the director
7 defendants because the plaintiff has not carried their burden
8 of showing control person liability.

9 As to four directors, plaintiffs did not even call those
10 directors. The jury does not even know who their names are.
11 As to the remaining directors, all directors are outside
12 directors.

13 For outside directors to have control person liability
14 under Ninth Circuit law, there must be day-to-day management of
15 the company, and there must be specific involvement with the
16 tweets at issue here.

17 There are neither -- there's proof of neither here. No
18 director has testified as to any day-to-day management. And no
19 director has testified as to any involvement with the issuance
20 of the two tweets at issue that serve as the basis for the
21 Rule 10b-5 claim.

22 The Ninth Circuit's law is clear on this question, as I'm
23 sure, actually, the Court noticed in looking at the good faith
24 instruction.

25 Here, the correct time to determine this is now. Either

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1 the Court needs to do it now, the Court needs to do it later,
2 or the Ninth Circuit will do it, because there is no sufficient
3 evidence for control person liability.

4 The Court should do it now, because there are four
5 directors who need to testify as to the affirmative defense,
6 but would not need to testify if the Court grants Rule 50(a),
7 judgment as a matter of law, as to control person liability.

8 **THE COURT:** All right. Thank you.

9 Quick response?

10 **MR. PORRITT:** I think the evidence shows that
11 certainly the witnesses -- the directors called who are members
12 of the audit committee were responsible for controls over
13 the -- of the public disclosures by Tesla, which is the
14 relevant primary violator here.

15 And so I think that establishes -- certainly for the
16 members of the audit committee because they were tasked with
17 primary responsibility for controlling the public disclosures
18 on behalf of Tesla and making sure that Tesla complied with the
19 securities laws.

20 And we disagree, and we will address the briefing in due
21 course, that you need specific involvement with the specific
22 tweets in question. I don't believe that's -- or the specific
23 public statements, representations in question. That really
24 would turn Section 20(a) liability on its head and suggest
25 that, you know, your -- ignorance would then become a defense,

PROCEEDINGS

1 which would not be proper.

2 As for the other directors, they are overall tasked with
3 control of Tesla. They are the board directors, and they are
4 responsible for putting in place adequate controls.

5 And the evidence is clear that the entire board approved
6 of Mr. Musk's Twitter feed being an official channel of
7 corporate communications, something that we have expert
8 testimony on, as an absolute egregious violation of corporate
9 governance.

10 So I think collectively, at a minimum, speaking in
11 immediate reaction to such a motion, we could point to that
12 evidence as sufficient to have found 20(a) liability.

13 **THE COURT:** Is it your view that there is not a
14 different standard for outside directors?

15 **MR. PORRITT:** I don't think there's a different -- I
16 think it's the facts and circumstances of every director, or
17 every control person. It doesn't necessarily have to be a
18 director. Although, in a corporate setting, directors are the
19 obvious control persons, in addition to the executives.

20 So, I think there's one standard for who is a control
21 person. I think it's a factual circumstantial test, that is
22 fact-specific. I think we have, certainly, sufficient evidence
23 here for the jury -- to support a jury determination that the
24 directors here were control persons of Tesla. And then they
25 would have a burden of proving their good faith defense.

PROCEEDINGS

1 **THE COURT:** So you take issue with the proposition
2 that outside directors can only be held liable if they were
3 involved in day-to-day management, and specifically involved in
4 the conduct in question?

5 **MR. PORRITT:** I do -- I do -- we would argue with
6 that. I don't believe that's a proper statement of the law.

7 **THE COURT:** Okay. I'll give you a chance to respond.

8 **MS. THOMPSON:** Yes, Your Honor. That is the law in
9 the Ninth Circuit. And we have cited on Page 4 of our brief,
10 which has been filed, is that service on the board as a whole
11 or service on a particular committee is not sufficient.

12 I believe Mr. Porritt actually even said that it's an
13 individual determination, board member by board member. Here,
14 they did not call four of the board members, so I think that
15 takes care of them, and it will streamline the case for the
16 jury. Those witnesses do not need to be called.

17 But it -- Mr. Porritt is absolutely incorrect that being
18 an outside director is sufficient. The Ninth Circuit law is
19 very clear on that. There must be day-to-day management of the
20 company, and there must be involvement with the specific
21 tweets.

22 Even if one of those is not met -- even if one of those
23 were met, which is not the case here, there's no -- there's no
24 evidence that there was specific involvement with the tweets.
25 So even if there were evidence they were day-to-day management,

PROCEEDINGS

1 there is no evidence that the board members knew about the
2 tweets, knew that they were coming. In fact, the law is to the
3 contrary.

4 And just to be clear, as to the four directors who have
5 not been called, it's not just that plaintiff didn't call them.
6 There's no evidence about their role in this, whatsoever. And
7 so the Court certainly should direct a verdict, grant judgment
8 as a matter of law to those four directors.

9 But I would just point the Court also to the cases cited
10 in our brief on Pages 3 to 7, but mainly Page 4, that if you're
11 an outside director, it's simply -- that is simply not enough.
12 Simply serving in your role as an outside director is not
13 enough.

14 As to the audit member specifically, actually, the --
15 Ms. Denholm's testimony made clear that the audit committee
16 reviews management's responsibility for carrying out the
17 policies. So there's no role, day to day, even for the members
18 of the audit committee.

19 Judgment as a matter of law on the Section 20(a) claim
20 should be granted.

21 **THE COURT:** All right. Your motion will be noted for
22 the record, and will be deemed submitted, taken under
23 submission. I'm not going to rule on it right now.

24 **MS. THOMPSON:** Thank you, Your Honor.

25 **THE COURT:** Okay. Thank you.

PROCEEDINGS

1 **MR. SPIRO:** Your Honor, just so the Court knows the
2 schedule, because I think it's fair to the Court, given where
3 we are --

4 **THE COURT:** Yeah.

5 **MR. SPIRO:** So we are going to call Mr. Teller, and we
6 have a deposition clip. We are doing that so that if the Court
7 does rule on the motion, there's at least a break; we're not
8 going to call the directors right now.

9 I'm in a bit of a tricky position, as the Court can
10 probably understand, because I don't want to call witnesses who
11 are defendants in a federal securities fraud trial who there
12 has not been one mention of their even name in the record. So
13 we don't think that the case can proceed against them, so I
14 don't want to call them and introduce them into the case in
15 which there is no record of them.

16 And if the Court does find at least to those four, then we
17 would not be calling them after that break.

18 **THE COURT:** Let me be clear. I'm not going to grant
19 the motion right now, at this point. So you can make your
20 decision whether you want to call them.

21 **MR. SPIRO:** I understand. That's what I was trying to
22 clarify.

23 **THE COURT:** Yeah.

24 **MR. SPIRO:** Okay.

25 **THE COURT:** So you can call them.

PROCEEDINGS

1 **MR. SPIRO:** We're still going to go in that order
2 because I -- I intentionally did that order so that if the
3 Court needed a minute, the Court would have the brief recess.
4 So I will confer with my colleagues and -- but that is how we
5 will proceed.

6 The next witness will be Mr. Teller.

7 **THE COURT:** All right.

8 **MR. PORRITT:** Is Mr. Teller live?

9 **MR. SPIRO:** Yes.

10 **MR. PORRITT:** Okay, I was just checking. I was just
11 confused by the deposition cites, sorry.

12 **THE COURT:** So Mr. Teller will be live, and then there
13 may be some -- up to you, whether you call board members or
14 not. Some by video, or at least one?

15 **MR. SPIRO:** There's one that has the health issue
16 that --

17 **THE COURT:** Yeah.

18 **MR. SPIRO:** -- as I indicated, would be by video, on
19 consent.

20 **MR. PORRITT:** (Nods head)

21 **THE COURT:** Okay. And other witnesses, have you
22 decided whether to call your expert?

23 **MR. SPIRO:** Yes, we have -- we will meet and confer on
24 these topics, and we will be ready in -- now we have about ten
25 minutes. We will be ready to proceed in front of the jury,

PROCEEDINGS

1 Your Honor.

2 **THE COURT:** All right. So it sounds like you may be
3 taking through the day, then, if you --

4 **MR. SPIRO:** No, I don't --

5 **THE COURT:** No?

6 **MR. SPIRO:** I wouldn't say that. I think the Court
7 will have an opportunity to instruct the jury from 1:15 to
8 2:00.

9 **THE COURT:** So I should work on the jury instructions,
10 is what you're telling me.

11 **MR. SPIRO:** Yes. If Your Honor has dispensed for the
12 moment with the 50(a), then not to tell the Court how to use
13 its time, but yes, Your Honor.

14 **THE COURT:** I got you.

15 **MR. SPIRO:** Thank you.

16 **THE COURT:** I got you. All right. Thank you.

17 **MR. PORRITT:** Thank you, Your Honor.

18 **THE COURTROOM DEPUTY:** Court is in recess.

19 (Recess taken from 10:25 a.m. to 10:47 a.m.)

20 (Jury enters the courtroom at 10:47 a.m.)

21 **THE COURT:** Have a seat, everyone.

22 Welcome back, members of the jury.

23 The plaintiffs have concluded their case in chief, and now
24 it's the phase where we shift to the Defendants' case. So the
25 Defense may call their first witness.

TELLER - DIRECT / LIFRAK

1 **MR. LIFRAK:** The Defendants call Sam Teller.

2 **THE COURT:** If you could administer the oath.

3 **SAM TELLER,**

4 called as a witness for the Defendants, having been duly sworn,
5 testified as follows:

6 **THE WITNESS:** I do.

7 **THE CLERK:** Thank you. Please have a seat.

8 Please speak clearly into the microphone. State and spell
9 your first and last name for the record.

10 **THE WITNESS:** Sure. Does this work? Yeah.

11 My name is Sam Teller. S-A-M, T-E-L-L-E-R.

12 **THE COURT:** Thank you, Mr. Teller.

13 You may proceed.

14 **MR. LIFRAK:** Your Honor, to move things along, we
15 would ask for admission of Exhibits 109 and 110-A, to which
16 there were no objections.

17 **THE COURT:** All right. Without objection, those will
18 be admitted.

19 (Trial Exhibits 109 and 110-A received in evidence.)

20 **DIRECT EXAMINATION**

21 **BY MR. LIFRAK**

22 **Q.** Good morning, Mr. Teller.

23 **A.** Good morning.

24 **Q.** You used to work for SpaceX and Tesla; is that correct?

25 **A.** That's correct.

TELLER - DIRECT / LIFRAK

1 Q. During what time period?

2 A. From 2014 to 2019.

3 Q. And what was your title at those companies?

4 A. My job title officially was director of the office of the
5 CEO and informally my title was chief of staff.

6 Q. Chief of staff to whom?

7 A. To Elon Musk.

8 Q. And how, at a very high level, would you describe your
9 job?

10 A. You know, the job varied a lot from day to day, but I'd
11 say in a lot of ways it was like air traffic control. There
12 was a lot of problem solving.

13 Often like a chief of staff role traditionally, you know,
14 will be a gatekeeper to the CEO. That was not as of the case
15 here. I wasn't throttling communication to Elon. He was the
16 type of -- or he is the type of CEO who likes to absorb
17 information directly, whether it's on Twitter or from the
18 public, from Tesla customers, from employees at SpaceX and
19 Tesla.

20 So I'd say my job was much more kind of facilitating and
21 problem solving internally, not as much gatekeeping.

22 Q. And how many hours a week typically would you be working?

23 A. It was -- it was pretty full on. So most of my waking
24 hours were working in some form.

25 Q. And maybe you've already answered this question, but why

TELLER - DIRECT / LIFRAK

1 did you leave?

2 **A.** After five years, I was pretty tired and, you know, it was
3 time to do something else.

4 **Q.** So we're going to pretty much talk about one topic in
5 particular with your testimony this morning, and that's the
6 meetings that you and Mr. Musk had with the PIF over the course
7 of 2017 and into 2018. Okay?

8 **A.** Okay.

9 **Q.** So going into 2018 had Mr. Musk discussed with you the
10 possibility of Tesla going private?

11 **A.** Yeah, absolutely. It was something that came up from time
12 to time. Pretty much as long as I've known him, the whole time
13 that I worked for him, it was just a subject that would come up
14 periodically.

15 He would often say that he wished that Tesla could be
16 private. We had the direct comparison of what it was like to
17 work at SpaceX and to run SpaceX as a private company, and so I
18 would say the subject had come up a number of times over the
19 years.

20 **Q.** So let's move to the PIF, and I'd like you to take a look
21 at Exhibit 105, which is in evidence.

22 **MR. LIFRAK:** And could we publish that to the jury,
23 please.

24 **THE COURT:** Okay.

25 (Document displayed.)

TELLER - DIRECT / LIFRAK

1 BY MR. LIFRAK

2 Q. Now, if you look at the first email in time, which is on
3 the bottom of the first page. And you can look at the screen
4 and see this. It's the bottom of the first page that goes onto
5 the second page. Do you see that email from Saad Al-Jarboa at
6 the PIF?

7 A. I do.

8 Q. And it was sent to an email address called the EM Desk
9 email account, and you had access to that; is that right?

10 A. Correct.

11 Q. And if you see on the second page of the email from
12 Mr. Al-Jarboa, it says (as read):

13 "My name is Saad Al-Jarboa and I work for His
14 Excellency Mr. Yasir Al-Rumayyan at the Public Investment
15 Fund."

16 Do you see that?

17 A. I do.

18 Q. And it says (as read):

19 "His Excellency has asked me to reach out to you in
20 order to inquire about your availability to meet with him
21 next week. His Excellency would be willing to meet with
22 you in either London or New York."

23 Do you see that?

24 A. I do.

25 Q. What did you do with his email?

TELLER - DIRECT / LIFRAK

1 A. I believe I forwarded this email to Elon and his
2 assistant.

3 Q. And then in the middle of the first page do you see where
4 Mr. Musk writes essentially a response to that email
5 internally?

6 A. I do see that.

7 Q. And Mr. Musk states (as read):

8 "I appreciate the offer, but my obligations prevent me
9 from traveling to those locations on those dates. Let's
10 just schedule something when he is next in California.
11 This is not an urgent matter."

12 Do you see that?

13 A. I do.

14 Q. And that is an email that Mr. Musk sent to you and to Emma
15 Gallagher?

16 A. Correct.

17 Q. And who is Emma Gallagher?

18 A. She was Elon's assistant at the time.

19 Q. And then do you see above that where Ms. Gallagher writes
20 to you (as read):

21 "Okay for me to convey?"

22 A. Yes.

23 Q. And then could you read your response to that?

24 A. I wrote (as read):

25 "Don't say 'not urgent.' Just say not possible

TELLER - DIRECT / LIFRAK

1 unfortunately. Hope to soon."

2 **Q.** And could you explain why you told her "Don't say not
3 urgent"?

4 **A.** Yeah. I think, you know, from time to time Elon would
5 communicate with us or just in general in a -- like a very
6 direct way. You know, he has a very unique style of
7 communication.

8 I think maybe if you watched *Saturday Night Live* you might
9 have even heard him say, you know, like, that he has
10 Asperger's. And so sometimes, like, the way that he
11 communicated, I would read it and determine that maybe it could
12 use a little translation or softening in order for the language
13 to have the intended effect.

14 **Q.** And so the meeting that's referenced here, or the
15 potential meeting, in November 2016, did that happen to your
16 recollection?

17 **A.** I believe the meeting happened in January of 2017.

18 **Q.** Okay. So let's talk about that. January 2017, do you
19 recall a meeting between the PIF and including you and
20 Mr. Musk?

21 **A.** Yeah.

22 **Q.** And January -- do you recall the approximate date in
23 January 2017?

24 **A.** I don't remember what day in January.

25 **Q.** Where was that meeting?

TELLER - DIRECT / LIFRAK

1 **A.** The meeting was at the offices of OpenAI, which is like an
2 artificial intelligence startup that Elon had co-founded.

3 **Q.** In what city?

4 **A.** In San Francisco.

5 **Q.** And who attended that initial meeting in January 2017?

6 **A.** From our side it was Elon and me and there may have been
7 one other person on our team. I don't remember. And then from
8 the PIF side there was Yasir and then two of his colleagues,
9 Saad and Turqi. I forget their last names.

10 **Q.** And going into that meeting what was your understanding of
11 the purpose of meeting with these representatives of the PIF?

12 **A.** The meeting had been teed up by a mutual contact who had
13 suggested the meeting to Elon in the context of a conversation
14 about Tesla going private. The person that introduced us said
15 that the Saudi fund was, like, maybe one of the only investors
16 in the world that would have enough money and potentially the
17 desire to fund a take-private transaction.

18 And so this -- the purpose of the meeting was, like, an
19 initial get to know you, but the only reason that Elon was
20 taking a meeting with a prospective investor like this was
21 because it was, you know, up against the backdrop of
22 potentially partnering on a take-private transaction.

23 **Q.** And just at a high level, what do you recall Mr. Musk
24 expressing at this meeting in January 2017?

25 **A.** He gave a high level intro about the companies. He said

TELLER - DIRECT / LIFRAK

1 that he would love to take Tesla private; that, you know, there
2 were a lot of headaches involved in being a public company and
3 that, you know, running SpaceX was a lot more straightforward.
4 You know, it was -- it was pretty high level along those lines.

5 **Q.** And what, if anything, do you recall Yasir saying at this
6 initial meeting?

7 **A.** Yasir said something to the effect of, "You know, we're
8 really interested in partnering with you. We are really
9 interested in potentially investing or funding a take-private
10 transaction. We -- you know, there's a -- there's a" -- I
11 think he said something like -- I don't remember the exact
12 language, but it was like, "There's a strategic -- it's of
13 strategic importance for us to diversify from oil or something
14 as a country." It was -- it was all very high level, but he
15 was basically expressing an interest in partnering with Tesla
16 as an -- either through an investment or a take-private
17 transaction.

18 **Q.** During this initial meeting, do you recall any kind of a
19 discussion regarding potential size of an investment in
20 whatever form?

21 **A.** I -- you know, it's almost five years ago and so I'm not
22 certain, but there was -- I have a faint recollection of, like,
23 a discussion of -- there was no specific number that I
24 remember, but something like tens of billions or -- there was
25 something like that discussed kind of conveying the order of

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1 magnitude, and the PIF response was basically like, "That's
2 fine."

3 Q. Were you aware -- and moving on from that meeting. Were
4 you aware of a March 2017 dinner meeting that involved Mr. Musk
5 and the PIF?

6 A. Yep.

7 Q. And did you attend that meeting?

8 A. I did not.

9 Q. Do you recall after that, in May and July of 2017, two
10 meetings that Mr. Musk had with the PIF?

11 A. Yeah. There were two meetings at SpaceX that took place
12 at Elon's desk. They -- to be honest, they kind of blend
13 together in my mind, but there were two meetings over that time
14 period between Yasir and Elon.

15 Q. And do you recall any discussion in those meetings in the
16 summer of 2017 regarding a potential go-private transaction?

17 A. Yeah. At a high level Elon expressed his ongoing
18 interest. And I think Yasir said something like -- again, not
19 a direct quote, but, like, "You know, we're still really
20 interested. We would like to partner with you."

21 And Elon, as I, like, recall, kind of responded to that
22 and said, "Well, you know, I'd be interested, but, you know,
23 why -- if you want to partner with us or make an investment or
24 do a take-private, why don't you go out and purchase shares on
25 the open market, which you can do because Tesla is a public

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1 company?"

2 Q. So at this point you've testified, I believe, about four
3 meetings: The January 2017, the two in the summer of 2017, and
4 the dinner meeting that you didn't attend; is that correct?

5 A. Correct.

6 Q. Were there any other meetings that you recall with the PIF
7 in 2017 leading up to the July 31st, 2018 meeting, which we'll
8 talk about in a minute?

9 A. I don't remember any other meetings.

10 Q. Do you have an understanding at a high level as to why
11 there weren't further meetings at that point?

12 A. I mean, I can speak to what was going on with us, which
13 was, you know, an extremely intense production ramp of the
14 Model 3 sedan, you know, at Tesla.

15 We were -- you know, especially going into spring and
16 summer of 2018 we were -- part of -- some of it has been
17 reported, lots has not been reported, but, you know, we were
18 sleeping in the factory. We were fixing production issues at
19 all hours of the night. We spun up a new -- you know,
20 literally like a new car production line in a tent in the
21 parking lot at Tesla. Things were extremely, extremely intense
22 and we were -- yeah, we were really busy trying to make sure
23 Tesla survived.

24 Q. All right. Let's turn to the July 31st, 2018 meeting.
25 Where did that take place?

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1 **A.** That was at the Tesla factory in Fremont, California.

2 **Q.** And how did you become aware that the representatives of
3 the PIF had arrived at the factory?

4 **A.** I believe one of Elon's assistants texted me that she
5 was -- she had, like, met Yasir in the lobby and was walking
6 out to the factory.

7 **Q.** All right. And could you take a look at Exhibit 110-A,
8 which is in your binder that's already in evidence?

9 **MR. LIFRAK:** And could we publish that to the jury,
10 please.

11 (Document displayed.)

12 **BY MR. LIFRAK:**

13 **Q.** If you look on the second page towards the bottom of
14 110-A, do you see the message at -- it's dated August 1st at
15 1:15 and then 1:16?

16 **A.** Yes.

17 **Q.** And that's from Reyna Ortiz?

18 **A.** Correct.

19 **Q.** And who is that?

20 **A.** One of Elon's assistants.

21 **Q.** And do you understand what times those are in Pacific
22 time?

23 **A.** Umm, those were at 6:00 -- 6:15, 6:16 p.m. Pacific time.

24 **Q.** On the day before, on July 31st; is that your
25 understanding?

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1 **A.** Correct.

2 **Q.** And do you see Ms. Ortiz says -- in her two texts she says
3 "Walking," and then the next one says "With Yasir"?

4 **A.** Yeah.

5 **Q.** And what did that indicate to you?

6 **A.** It was, like I said before, she was -- she had picked him
7 up in the lobby, which was maybe a five, six-minute walk
8 from -- from the conference room where we were meeting in the
9 middle of the factory, and so she was with Yasir.

10 **MR. LIFRAK:** Your Honor, at this time we'd ask that
11 we'd be able to publish a timeline demonstrative that we've
12 exchanged with the other side and there are no objections to.

13 **THE COURT:** Okay.

14 (Document displayed.)

15 **BY MR. LIFRAK**

16 **Q.** Okay. So the first entry in the timeline is what we just
17 talked about at 6:15 and 6:16. At that point are -- where are
18 you?

19 **A.** I was out in the factory near the conference room, an area
20 where our desks were where the meeting would take place.

21 **Q.** And then what did you respond at 6:16 p.m. to Ms. Ortiz?

22 **A.** I said (as read):

23 "I can say hi and chat a couple."

24 **Q.** Okay. And let's put that on the timeline.

25 So based on your text, can you give us a sense of what

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1 time the meeting started?

2 **A.** Looking at this timeline, I think it was -- it would be
3 sometime between 6:16 and 6:21.

4 **Q.** And who was there at the beginning of this meeting with
5 the PIF?

6 **A.** From our side it was Elon and me. And I believe at the
7 beginning of the meeting it was Yasir and maybe one of his
8 colleagues, and then one or two ended up joining late from
9 their side. So they ended up with a total of three people.

10 **Q.** And what, to the best of your recollection, did Mr. Musk
11 talk about initially?

12 **A.** Yeah. To start off the meeting, Elon pretty much just
13 gave an update about what was happening at Tesla, some of the
14 stuff I described a couple minutes ago, just how intense the
15 scaling up of the Model 3 production had been.

16 **Q.** And what do you recall Yasir saying initially?

17 **A.** The first thing that I remember Yasir saying was something
18 like -- you know, I think Elon said, "Well, that's what's going
19 on with us. How are you," or something.

20 And Yasir said, "Well, you know, an update from our side
21 is we've acquired almost 5 percent of Tesla. We've bought
22 shares on the open market."

23 **Q.** And when you heard that, what did you do?

24 **A.** I was really surprised, and I texted Deepak Ahuja, who was
25 the Tesla CFO, and Martin Viecha, who was the head of Investor

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1 Relations for Tesla.

2 Q. And what did you text them at that point?

3 A. I said (as read):

4 "Yasir from Saudi PIF here says they own almost
5 5 percent of Tesla ."

6 Q. And what time were those texts?

7 A. 6:23 p.m.

8 Q. And if we could put that on the timeline.

9 Was that -- to the best of your recollection, those texts
10 were sent immediately after Yasir talked about the 5 percent?

11 A. Correct.

12 Q. What was Mr. Musk's reaction to that revelation; that the
13 PIF had purchased 4.9 percent of the company?

14 A. Elon was really surprised. I remember he, like, kind of
15 sat up straight in his chair, and I would say the tone of the
16 meeting changed slightly. It became, like, more positive and
17 engaged. And, you know, he said something to the effect of,
18 like, "Wow. That's amazing. I had no idea. That's really
19 great to hear."

20 Q. So after this period that we've talked about at 6:23,
21 what -- what happened next in the meeting?

22 A. As I said, Yasir said that about five -- almost 5 percent.
23 Elon replied. And then Yasir said something, and it was kind
24 of like -- he wasn't, like, making fun of Elon, but I would say
25 it was almost like a gentle ribbing.

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1 He -- he was like, "And, you know, Elon, we're still
2 really interested in doing a take-private with you, but, you
3 know, we kind of didn't hear anything from you for a while."
4 Kind of like, what's up with that?

5 Q. And what was the response?

6 A. Elon said, "Well, after we had dinner" -- you know, this
7 is not a direct quote. The gist of it was, like, you know:
8 After we had dinner with Masa and Larry last year at Tesla, I
9 got a pretty negative impression of Masa. And my understanding
10 was that you, the Saudi PIF, and Masa and SoftBank were kind of
11 joined at the hip; that you were partners. And, you know, as a
12 result, it kind of felt to me like it probably wasn't going to
13 make sense for us, you know, to move forward.

14 Q. Okay. And what did Yasir say to that?

15 A. Yasir was like -- he's like, "We are partnered with Masa
16 in certain ways. We are, like -- we are friends and we work
17 together, but we are a separate fund." He said, "You know, we
18 make our own investments. Masa makes his own investments."

19 And then the thing that I remember him saying verbatim
20 was, he said, "You know, at the PIF we make our own
21 investments." And then he said, quote, "I am the
22 decision-maker." And I remember that very clearly.

23 Q. And so once you hear Yasir say that he's the
24 decision-maker, what did you do?

25 A. At that point I texted Deepak and Martin again, and I

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1 said --

2 Q. What did you say?

3 A. I said, "Deepak, you may want to join in Jupiter now."

4 Q. And so that's right after -- after Yasir says, "I'm the
5 decision-maker"?

6 A. Yeah. I don't remember exactly, but it was -- I would
7 have texted that, like, pretty much as soon as that happened.

8 Q. And so once Yasir makes that declaration, what was Elon's
9 reaction?

10 A. It was kind of, again, he, like, sat up a little
11 straighter, leaned in. Like, you could feel that the tone in
12 the room became a lot more serious. It -- like, the meeting
13 had gone from a kind of casual catch-up to, like, a -- you
14 know, a real -- a more serious discussion.

15 And Elon said, "Well, if -- you know, in that case" --
16 again not a direct quote, but the gist of it was: In that
17 case, well, I would still be interested if you're not connected
18 to Masa, and, you know, we should talk about it.

19 Q. So after that point in the meeting, was there any
20 discussion about the amount of money that might be needed for a
21 go-private transaction?

22 A. There was -- I don't remember a specific dollar amount,
23 but there was a discussion, like, along the lines of, like,
24 "It's going to be a lot of money." Elon said something like
25 that. He was, like, "Well, you know, it's going to take" -- I

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1 don't remember if he said tens of billions exactly or something
2 like that, but it was, like, you know, "It's going to take a
3 lot of money."

4 Q. And what was Yasir's reaction to that?

5 A. Yasir was like, "Don't worry about it. Like, we've got a
6 lot of money."

7 Q. During this meeting, any discussion of price at all?

8 A. I am not sure. It's possible that it was -- that it was
9 discussed maybe, like, a 20 percent premium to the current
10 Tesla share price, but I'm not 100 percent certain if that
11 happened in that meeting or a different meeting.

12 Q. Was there any discussion of a potential structure of a
13 go-private transaction?

14 A. I don't remember much about a specific structure other
15 than Elon said that he would want existing shareholders in a
16 public Tesla to have the ability to remain shareholders in a
17 private Tesla.

18 Q. So if we go back to our timeline, you had texted Mr. Ahuja
19 at 6:26. At some point did he arrive at the conference room?

20 A. He did.

21 Q. And if you could turn back to Exhibit 110-A, which are
22 your text messages. Do you see the text from Mr. Ahuja at 6:34
23 saying "Outside now"?

24 A. Yes.

25 Q. And what did you take that to mean?

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1 **A.** That he was standing outside the conference room.

2 **Q.** And then he came into the conference room; right?

3 **A.** Yes.

4 **Q.** And did the discussions continue once he came into the
5 conference room?

6 **A.** Yeah. Yeah, the conversation continued for a bit.

7 **Q.** And just -- the discussions that you had that you just
8 talked about about price, about potential structure in some
9 way, are you sure whether those happened before he came into
10 the room or after?

11 **MR. APTON:** Objection. Misstates the testimony.

12 **THE COURT:** Overruled.

13 **A.** I don't remember when those happened, if it was before or
14 after Deepak came in.

15 **BY MR. LIFRAK**

16 **Q.** Okay. So could you describe to the jury what happened at
17 the conclusion of the meeting?

18 **A.** Sure. At the end of the meeting, we kind of all got up
19 and gathered by the door. We were saying goodbye and Elon and
20 Yasir, you know, shook hands and it was -- you know, the gist
21 of what they were saying was, like, "I'm really excited to do
22 this. I'm really excited to do this." The tone was very
23 positive and excited.

24 And they shook hands, and then Yasir said something to the
25 effect of, "If I don't hear from you in a week, I'm going to

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1 call you, or I'm going to reach out."

2 Q. All right. Do you recall them saying anything when they
3 were shaking hands, or is that the discussion that you just
4 referenced?

5 A. Umm, they -- I don't remember, like, a specific quote, but
6 it was, like -- you know, it was, like, "I'm really excited to
7 do this." Like, the gist of it was, you know, a lot of, "You
8 know, we're really excited to move forward." Like, "This
9 sounds great. We'll have our teams -- like, we'll have our
10 teams follow-up on details." That kind of thing.

11 Q. And if you could refer back to your text messages at
12 Exhibit 110-A. Do you see the text at 7:05 saying (as read):

13 "Omead, where you at? He's going to come."

14 Do you see that?

15 A. I do.

16 Q. And what -- and that was at 7:05?

17 A. Correct.

18 Q. And what did -- what does that indicate to you?

19 A. The meeting had ended by that point and Elon, around that
20 time, was going to head back out into the factory to continue
21 working on production issues.

22 Q. So after that meeting on July 31st, what was your
23 impression of the situation in terms of the PIF potentially
24 funding a go-private transaction?

25 A. My understanding was that we were going to proceed with a

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1 take-private transaction. Yasir from the PIF had very clearly
2 communicated that he was the decision-maker. He said that he
3 had the ability, that he had the desire, that he had the intent
4 to fund a take-private transaction of Tesla.

5 And so my understanding leaving that meeting was that the
6 Saudis would be funding a take-private transaction with Tesla
7 and that at some point, you know, our teams -- finance teams,
8 legal teams -- would, you know, iron out the details.

9 But at a high level, you know, it was my sense that they
10 had made a handshake deal to proceed.

11 **Q.** Thank you, Mr. Teller.

12 **MR. LIFRAK:** Nothing further at this time.

13 **THE COURT:** All right. Thank you.

14 Cross.

15 **CROSS-EXAMINATION.**

16 **BY MR. APTON**

17 **Q.** Good morning, Mr. Teller. How are you doing? Or good
18 afternoon? Good morning? Good morning still.

19 **A.** Good morning.

20 **Q.** How are you?

21 **A.** I'm doing well. How are you?

22 **Q.** Okay.

23 **MR. LIFRAK:** If I could just pull up Exhibit 80, which
24 is already in evidence.

25 (Document displayed.)

1 **BY MR. LIFRAK:**

2 **Q.** These are the PIF minutes or the Saudi PIF's meeting
3 minutes from the July 31st meeting.

4 **A.** Sure.

5 **Q.** And on the left-hand side, you see the attendees.
6 Mr. Al-Jarboa, that was the same gentleman who was on your
7 email, Exhibit 105, talking about the meetings in 2017;
8 correct?

9 **A.** That's correct.

10 **Q.** And Mr. Mogren, he was the new guy that was taking notes
11 at the meeting; correct?

12 **A.** I don't remember if it was Saad or Naif who was taking
13 notes at the meeting.

14 **Q.** Okay.

15 **A.** One of them was taking notes on a -- with pen and paper on
16 a notepad.

17 **Q.** Understood. Thank you.

18 **A.** Yeah.

19 **Q.** Yeah. You didn't take notes at the meeting; correct?

20 **A.** I did not take notes at the meeting.

21 **Q.** And actually at a certain point in the meeting I believe
22 you said you stopped paying attention? You were checking
23 email? Does that sound familiar?

24 **A.** Just from time to time in all meetings, including this
25 one, there were a lot of things going on, and so I might have

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1 checked my email or my text messages. And, as I mentioned
2 earlier, I was texting with Deepak and Martin at different
3 points in the meeting.

4 **Q.** And would you describe yourself as pretty ADD?

5 **A.** I would. I do have ADHD, but I was also Elon's chief of
6 staff for five years and was able to do that job despite that.

7 **Q.** Understood.

8 Now, after the five years, you left; right? Where are --
9 where are you working now?

10 **A.** I am a venture partner at Valor Equity Partners.

11 **Q.** Valor Equity Partners. That's Antonio Gracias' fund;
12 correct?

13 **A.** He is the founder of Valor, correct. I'm a part-time
14 employee there.

15 **Q.** He's your boss?

16 **A.** He's a -- I wouldn't characterize him as my boss. I'm
17 more like an independent kind of -- more like a consultant.
18 He -- I was a full-time employee there for a couple years, but
19 at this moment I am not.

20 **Q.** He's good friends with Elon; right?

21 **A.** I believe they are good friends.

22 **Q.** And if Antonio wanted you out of Valor, he could make that
23 happen; right?

24 **MR. LIFRAK:** Objection. Calls for speculation.

25 **THE COURT:** Overruled.

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1 **A.** Certainly, he could end my agreement with Valor and he
2 could have me out of Valor for sure.

3 **BY MR. APTON**

4 **Q.** One more thing. You mentioned one thing while you were
5 testifying with Mr. Lifrak. You said that -- would Elon rely
6 on you to, I think you said, soften his public communications
7 at times?

8 **A.** That's not exactly what I said, or it's not what I
9 intended to say. I was saying less about public
10 communications.

11 I was not -- you know, I was not composing public
12 communications for him, but from time to time in internal
13 communications or with -- in communications with external
14 parties, I -- yes, from time to time I might soften his
15 language.

16 **Q.** So did he expect you to do that or did you see the need to
17 do it yourself voluntarily?

18 **A.** It was something I just exercised judgment in the course
19 of, you know, day-to-day operations.

20 **Q.** You didn't see the August 7 tweets before they were
21 published; did you?

22 **A.** I did not.

23 **Q.** Okay. Thank you.

24 **MR. APTON:** No further questions, Your Honor.

25 **THE COURT:** All right. Thank you.

KONEY - VIDEO TESTIMONY - NOT REPORTED

1 Anything further?

2 **MR. LIFRAK:** Nothing further. Thank you.

3 **THE COURT:** All right. Thank you, Mr. Teller. You
4 may step down. You're excused.

5 **THE WITNESS:** Thank you.

6 (Witness excused.)

7 **THE COURT:** Next witness.

8 **MR. LIFRAK:** The next witness, Your Honor, for the
9 Defense is Owuraka Koney by video deposition.

10 **THE COURT:** All right.

11 **OWURAKA KONEY,**

12 called as a witness for the Defendants herein, testified via
13 videotaped deposition played in open court, not reported.

14 **THE COURT:** All right. Thank you.

15 Next witness.

16 **MR. LIFRAK:** The defendants call Defendant James
17 Murdoch.

18 **THE COURT:** All right. Mr. Murdoch.

19 **JAMES MURDOCH,**

20 called as a witness for the Defendants, having been duly sworn,
21 testified as follows:

22 **THE WITNESS:** Yes.

23 **THE CLERK:** Thank you. Please have a seat.

24 **THE WITNESS:** Thank you.

25 **THE CLERK:** You're welcome.

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1 Please speak clearly into the microphone. State and spell
2 your first and last name for the record.

3 **THE WITNESS:** James Murdoch. J-A-M-E-S,
4 M-U-R-D-O-C-H.

5 **THE COURT:** Thank you, Mr. Murdoch.
6 You may proceed, Mr. Lifrak.

7 **DIRECT EXAMINATION**

8 **BY MR. LIFRAK**

9 **Q.** Good morning, Mr. Murdoch.

10 **A.** Good morning.

11 **Q.** Are you currently a member of the Tesla Board of
12 Directors?

13 **A.** Yes, I am.

14 **Q.** And how long have you been on the Tesla Board?

15 **A.** I've been on the Board since around the middle of 2017.

16 **Q.** Are you what is known as an outside director?

17 **A.** Yes.

18 **Q.** And could you explain briefly to the jury what that means?

19 **A.** Yes. I'm an -- I'm an independent director or outside
20 director. I don't have any executive connection or function
21 within the business. I serve solely as -- as an independent
22 director on the Board concerned with, you know, the governance
23 of -- the governance of the company.

24 And there are various rules and, you know, various
25 qualifications that, you know, the stock exchange, et cetera,

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1 has for qualifying as an independent, which I meet.

2 **Q.** At a high level could you describe your professional
3 background?

4 **A.** I spent most of my -- most of my career in the film and
5 television business, in the media business in Asia, in India,
6 and China in particular, in Europe, and then in the United
7 States.

8 In film and television I was the chief executive officer
9 of two public companies: Sky PLC, a listed company in the
10 United Kingdom, as well as chairman of that company for a
11 number of years; and the chief executive officer of
12 21st Century Fox until 2019, which is a film and television
13 company globally.

14 **Q.** And what was it that interested you in joining the Tesla
15 Board in the first place?

16 **A.** For me, you know, really I think the -- the primary --
17 I've had a long kind of passion for interest in environmental
18 issues, technology, environmental policy. And Tesla's mission
19 to accelerate the world's transition to renewable energy I
20 found, you know, enormously compelling. To see a company
21 striving to do that in the private sector and striving to
22 innovate and invest to solve major problems in a mission-driven
23 way I found very compelling.

24 And I would also say as a -- you know, as a technology
25 company, but with a -- you know, heavy manufacturing ambitions.

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1 It was also, you know, a fascinating set of challenges, as
2 the company was expanding internationally and really starting
3 to get into a real growth phase.

4 So it was an interesting opportunity and I thought that
5 some of my experience could be helpful. And when I was
6 approached, I -- you know, I thought along those lines.

7 **Q.** Do you recall receiving an email from Mr. Musk on
8 August 2nd, 2018 entitled "Offer to Take Tesla Private at
9 \$420"?

10 **A.** Yes, I do.

11 **Q.** And what was your initial reaction when you got that
12 email?

13 **A.** I think -- you know, I think my mind turned first to
14 process. You know, as an independent director to, okay, this
15 is a -- this is a serious -- you know, the email was a serious
16 approach. It had to be taken seriously and we would have to
17 put kind of a scaffolding around the governance of dealing with
18 that approach.

19 And I think in the context of having a bidder who is, you
20 know, an outside bidder potentially offering to take the
21 company private, but who was also the chairman and CEO of the
22 company at the time, just meant that we would have to put an
23 extra set of sort of belt and braces around that.

24 So I turned quite quickly in my mind to process, to say,
25 "Okay. The Board better -- we're going to convene soon and we

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1 have to deal with this." And, indeed, we did convene and start
2 to deal with it with alacrity.

3 Q. And, in fact, do you recall convening that same day on
4 August 2nd as a Board?

5 A. Yes.

6 Q. And do you recall at that meeting the CFO of the company,
7 Mr. Ahuja, addressing the Board at that meeting?

8 A. Yes, I do.

9 Q. Let's turn to the evening of August 2nd. Do you recall
10 Mr. Musk was at your home that evening? Do you recall that?

11 A. Yes, yes. He came by.

12 Q. And what was the occasion of him coming by?

13 A. It was more of a -- it was actually more of a social
14 occasion. It was just he and my wife and I catching up after
15 some period of time. So we sat and talked about a variety of
16 different things.

17 Q. Did the subject of Mr. Musk's email earlier that day to
18 the Board about a potential go-private transaction come up
19 during his visit?

20 A. It did come up, but among other things that we talked
21 about.

22 Q. Do you recall anything that was said about that subject at
23 your home?

24 A. I think the most -- the thing that I recall about the
25 conversation was it was mostly around this kind of approach

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1 that Elon had, which was to allow or to really encourage
2 existing shareholders in the business to be able to roll over
3 into a private entity. And, you know, I found that to be
4 novel.

5 My mind turned to, you know, that that might be difficult
6 for some fund managers, for some portfolio managers with
7 certain mandates they could -- some of them might be allowed by
8 their investors to be in private companies, others might not.

9 So it wasn't -- it struck me as not an easy thing to do,
10 but it was certainly novel and certainly very, I think,
11 inclusive of, you know, what shareholders' interests might be.
12 We talked about some of those dynamics more than anything else.

13 Q. And then do you recall another Board meeting the next day
14 August 3rd, 2018?

15 A. Yes.

16 Q. And did Mr. Musk speak at that meeting?

17 A. Yes, he did.

18 Q. Do you recall at a high level what he said about the
19 availability of potential funding for a go-private transaction?

20 A. Yes. It was consistent with what Deepak had said and
21 Mr. Ahuja the day before. The -- you know, I think he was --
22 he was pretty clear that there had been, you know, strong
23 interest. There had been conversations with potential
24 investors to come and help put together a transaction like
25 this.

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1 And, you know, it struck me as, you know, at the time that
2 given the variable amount of capital that might be necessary,
3 given the uncertain nature of how many shareholders might roll
4 over or not or have to sell or choose to sell, but the funding
5 was -- you know, funding was abundant from certain sources and,
6 you know, clear level of interest and intent had been
7 expressed.

8 Q. And taking a step back just for a minute, have you done
9 business in the Middle East with Middle Eastern entities?

10 A. Yes, I have.

11 Q. And could you describe that briefly?

12 A. I did a -- I mean, from -- in a number of different
13 contexts. I mean, one as a -- as a public company executive, I
14 had -- we had in our shareholder base a number of -- a number
15 of Middle Eastern investors over the years. One, in
16 particular, who was a major investor for, you know, over 20
17 years in the company until we -- until we sold the company, who
18 was very, you know, consistent. Always -- always wanted to
19 deal principal-to-principal. Always, you know, very consistent
20 in terms of, you know, having a conversation, dealing
21 principal-to-principal and then following through.

22 And in another context I had a joint venture there in the
23 news business with a government-related entity. And, again,
24 you know, I found -- I found -- I found dealing
25 principal-to-principal very, very important.

MURDOCH - DIRECT / LIFRAK

1 But also that, you know, you would -- you could kind of
2 make an -- you could kind of make an agreement and then you
3 would -- and then you could see it consummated. It was
4 something that was -- it wasn't very wishy-washy. It was
5 pretty straight.

6 **Q.** So given that experience, did it -- did it surprise you
7 that Mr. Musk expressed confidence in funding via the Saudi PIF
8 even though there weren't any signed documents at that point?

9 **A.** No, it didn't -- it didn't surprise me. And I think the
10 confidence -- you know, you could have -- you could have
11 confidence in those conversations, to my understanding and in
12 my experience.

13 **Q.** Moving on to August 7th, 2018. Did you become aware at or
14 about the time of Mr. Musk's tweets that he had tweeted or
15 shortly thereafter?

16 **A.** It was around that time. I can't recall exactly the
17 moment.

18 **Q.** And did Mr. Musk at some point explain to you why he
19 tweeted when he tweeted?

20 **A.** I think that -- I think it was consistent with -- it was
21 consistent with my understanding, which was, you know, he
22 really -- you know, he really wanted to be transparent with
23 kind of everyone, all the shareholders, all the employees, all
24 the different stakeholders in this.

25 So his -- I can't speak to his mind. You know, I'm under

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1 oath here. I can only talk to my own experience. But
2 certainly in my mind -- right? -- it was, okay, this is kind of
3 a cleansing. He wants to come out and be totally transparent
4 around his intents, and that's -- and that was -- you know,
5 that was going to get the process started in a real way, and
6 that was not something that surprised me.

7 I later understood that also there had been some news or
8 was about to be or at the same time there was news about the
9 PIF having acquired a stake in the public markets in the
10 company. And it would be normal to try to contextualize that
11 and be proactive or be on the front foot, if you will, rather
12 than have small bits of information out in the public domain
13 without really understanding the context of what -- of what he
14 was intending to propose.

15 Q. In Mr. Musk's initial tweet on August 7th do you recall
16 the statement "Am considering taking Tesla private at \$420"?

17 A. Yes.

18 Q. And in your mind was that consistent with the information
19 that you had from Mr. Musk at that time?

20 A. Yes, it was.

21 Q. And do you remember seeing the term "funding secured" in
22 Mr. Musk's tweet as well?

23 A. Yes.

24 Q. And was that, in your mind, consistent with the
25 information that you had both from Mr. Musk and from Mr. Ahuja?

1 **A.** Yes, that they had a great confidence in the availability
2 of funding for -- for such a transaction.

3 **Q.** And ultimately the go-private transaction did not occur;
4 is that right?

5 **A.** That's correct.

6 **Q.** And do you have an understanding in your position as a
7 Board member as to why that did not happen?

8 **A.** Yes. And I -- and we discussed it as a Board, you know,
9 at great length.

10 You know, ultimately once the -- once Elon was able to go
11 and talk to shareholders kind of directly after having kind of
12 cleansed the situation, solved what are known as the selective
13 disclosure rules and things like that so he could go and talk
14 to shareholders, because his intent was out in the public.

15 You know, when we had the -- the last Board meeting around
16 this subject, we, you know, talked about the possibility of
17 closing a transaction, the availability of funding, you know,
18 all of those things. Elon's outside advisors presented, if I
19 recall.

20 But ultimately certain shareholders, large shareholders,
21 really had a desire and expressed that desire for the company
22 to stay public, either because, as I mentioned before, in their
23 mandates or whatever rules they had within the particular
24 pockets of money that they were mandated to invest they
25 couldn't hold the shares. They couldn't move from one vehicle

MURDOCH - CROSS / TRIPODI

1 to another. Or they just thought that the company was better
2 off being a public company and, you know, having access to
3 capital in that way, et cetera.

4 But fundamentally I think shareholders' preference or
5 major shareholders' preference in thinking staying public would
6 be a good thing, they would prefer that, ultimately I think
7 caused Elon -- and as he described to the Board consistently,
8 you know, caused him to think that, you know, better not to
9 pursue this at this time. Better to focus on the operations of
10 the business, not be distracted by this, and shareholders kind
11 of giving him a clear signal.

12 **Q.** Thank you, Mr. Murdoch.

13 **MR. LIFRAK:** Nothing further.

14 **THE WITNESS:** Thank you.

15 **THE COURT:** All right. Thank you.

16 Cross?

17 **CROSS-EXAMINATION.**

18 **BY MS. TRIPODI**

19 **Q.** Good morning, Your Honor. Good morning, everyone.

20 Good morning, Mr. Murdoch. How are you?

21 **A.** Good. Thank you.

22 **Q.** You've known Elon Musk for over 20 years; right?

23 **A.** Right.

24 **Q.** And do you consider him a friend?

25 **A.** Yes, we're -- we're friendly.

MURDOCH - CROSS / TRIPODI

1 Q. And your families have done things together?

2 A. Yes. We have children the same age.

3 Q. And in 2018 did you own stock in Tesla?

4 A. In 2018? Yes, I believe I did.

5 Q. And am I correct that at that time your Tesla stock was
6 worth approximately \$30 million?

7 A. No, I don't believe so. Not in 2018.

8 Q. Do you have a sense of what your stock was worth then?

9 A. I think it was more like two.

10 Q. Was that an important investment for you?

11 A. You know, I take all investments kind of, you know,
12 seriously. But I had bought the stock well before I became a
13 director, so it was something that I just -- as I said earlier,
14 you know, I really believe in mission-driven companies, and
15 particularly this company's mission. And I had bought the
16 stock as a customer. I really enjoyed the car that I had
17 bought and thought that, you know, the more people that buy the
18 cars and the more people that buy the stock, the more
19 successful the company can be in prosecuting its mission, which
20 is an important one.

21 Q. Are you currently a stockholder in SpaceX?

22 A. Yes, I am.

23 Q. And is that also an important investment for you?

24 A. Yes, it is. It's not a -- it's not a -- it's not a huge
25 percentage or anything like that. It's a passive investment.

MURDOCH - CROSS / TRIPODI

1 Q. After the tweets that are at issue in this litigation, the
2 August 7th tweets, at some point after those had been tweeted,
3 am I correct that Tesla implemented a social media policy?

4 A. I think we -- I think we clarified. We added to or
5 clarified an existing policy around the dissemination of
6 information, including social media.

7 Q. And since that social media policy has been in place, have
8 there been occasions where you and your fellow directors might
9 review Elon's tweets and perhaps adjust them or provide
10 suggestions?

11 A. The policy -- the policy requires that the -- that
12 material non-public information, like internal information
13 about Tesla's operations or future operations, et cetera, that
14 if it's desired to put that in social media, that Elon takes
15 those to either the general counsel or the company or the CFO,
16 if the general counsel isn't available. It's not for the Board
17 to pre-clear the tweets. It's to ensure that a process is in
18 place and is followed along those lines, and it has been
19 followed.

20 Since the -- we now have a disclosure controls committee,
21 which also meets regularly and reviews the activity after the
22 fact around: Has that policy been implemented? Have those
23 procedures been followed? And are they appropriate?

24 Q. Prior to August 7th of 2018, were you aware of any review
25 process for Elon's tweets at Tesla?

MURDOCH - CROSS / TRIPODI

1 **A.** There was a -- yes. There was -- there was a policy in
2 place around material non-public information that was inclusive
3 of all communications. The August 7th or 8th, or whenever it
4 was, clarification or additional piece there was just
5 specifically calling out that this includes social media to
6 name that, if I recall correctly.

7 **Q.** And to your knowledge, had there ever been -- prior to
8 August 7th, had there ever been review of any of Mr. Musk's
9 tweets?

10 **A.** I believe if there was material non-public information
11 involved, that the normal -- the normal process would have been
12 finance and audit, et cetera, would have been involved or the
13 general counsel.

14 **Q.** But you were not involved in any such process?

15 **A.** No, not -- not before. I became a member of the
16 disclosure controls committee after all of this.

17 **Q.** Thanks, Mr. Murdoch.

18 **BY MS. THOMPSON:** No further questions.

19 **THE WITNESS:** Thank you.

20 **THE COURT:** All right. Thank you.

21 Anything on redirect?

22 **MR. LIFRAK:** Nothing further. Thank you.

23 **THE COURT:** All right. Thank you, Mr. Murdoch. You
24 are excused. You may step down.

25 **THE WITNESS:** Thank you very much.

K. MUSK - DIRECT / PRICE

1 (Witness excused.)

2 **THE COURT:** All right. Further witnesses?

3 **MR. PRICE:** Good morning, Your Honor. We call
4 Defendant Kimbal Musk.

5 **THE COURT:** Okay.

6 **KIMBAL MUSK,**
7 called as a witness for the Defendants, having been duly sworn,
8 testified as follows:

9 **THE WITNESS:** I do.

10 **THE CLERK:** Thank you. Please have a seat.
11 Please speak clearly into the microphone and please state
12 your first and last name and spell it for the record.

13 **THE WITNESS:** My name is Kimbal Musk, K-I-M-B-A-L,
14 M-U-S-K.

15 **THE COURT:** Thank you, Mr. Musk.
16 You may proceed, Counsel.

17 **MR. PRICE:** Thank you.

18 **DIRECT EXAMINATION**

19 **MS. TRIPODI**

20 **Q.** So, Mr. Kimbal Musk, are you Elon Musk's brother?

21 **A.** I am.

22 **Q.** Let me talk to you about why you are here today. Is it
23 correct that you are an outside director on Tesla's Board of
24 Directors?

25 **A.** I'm a -- I'm a member of the Board of Directors.

K. MUSK - DIRECT / PRICE

1 Q. And you were not part of management of Tesla; is that
2 right?

3 A. I was not part of management.

4 Q. Okay. Have you ever been part of management at Tesla?

5 A. I have never been part of management. I've done a lot of
6 work operationally. I've worked with the management, worked in
7 the offices over the past 20 years and really enjoyed my time
8 there, but I'm not a member of management.

9 Q. And as a non-management member of Tesla's Board of
10 Directors, do you understand that in this case you're being
11 sued personally for billions of dollars for alleged violations
12 of the securities laws?

13 A. I'm aware.

14 Q. So let's -- let's talk about your activity then.

15 In fact, first, let's step back. You mentioned that
16 you're Mr. Musk's brother. Did you come from South Africa to
17 the United States around the same time your brother did?

18 A. Yeah. About two years later.

19 Q. And that was about when?

20 A. I arrived in the United States in 1995.

21 Q. And at some point you became a member of Tesla's Board of
22 Directors; right?

23 A. At the beginning, yes.

24 Q. And when you say "at the beginning," could you tell the
25 jury when that was?

K. MUSK - DIRECT / PRICE

1 **A.** Sorry. At the founding of the company, I joined the Board
2 of Directors, I believe it was April of 2004, at the request of
3 my brother.

4 **Q.** And are you also associated with SpaceX?

5 **A.** I am. I joined the Board of SpaceX and was the first
6 outside investor in 2022.

7 **Q.** So let's bring you to the events that matter in this case,
8 and that's August of 2018.

9 **MR. PRICE:** If we could put up Exhibit 81, which is in
10 evidence, and publish that to the jury. That's the email offer
11 to the Board of Directors on August 2nd, 2018.

12 (Document displayed.)

13 **BY MR. PRICE**

14 **Q.** You received this email around August 2nd of 2018?

15 **A.** Yes, I did.

16 **Q.** And there was a Board of Directors meeting shortly after
17 the receipt of this email; is that right?

18 **A.** There was a Board of Directors meeting that I was not part
19 of, but I was part of one the day after that.

20 **Q.** And can you explain to the jury why you were not a member
21 of the Board of Directors meeting on August 2nd?

22 **A.** Yes. I'm a related Board member. So I'm not independent.
23 And the Board regularly would meet -- wouldn't even inform me
24 that I was recused necessarily.

25 For example, I didn't even know about that Board meeting

K. MUSK - DIRECT / PRICE

1 because I'm related to my brother and not considered an
2 independent Board member.

3 **Q.** Now, you mentioned there was a Board meeting the second
4 day on August 3rd and you were part that Board meeting?

5 **A.** Yes, I was.

6 **Q.** How was it you were -- you were allowed to attend that?

7 **A.** My brother attended as well. It was a Board meeting that
8 was inclusive of Elon as the bidder, and so I was able to
9 attend.

10 **Q.** There are minutes of that Board meeting?

11 **A.** Yes.

12 **Q.** And did you read the minutes of that Board meeting?

13 **A.** I have read them in preparation for today.

14 **Q.** Okay. Do those minutes accurately reflect what happened
15 during that Board meeting?

16 **A.** Yes.

17 **Q.** Now, you mentioned that you were recused from August 2nd.
18 After the August 3rd Board meeting, what, on a high level, did
19 the Board of Directors do then in response to this August 2nd
20 offer?

21 **A.** Well, they did their -- the regular response you would
22 expect. They -- I believe our lead director Antonio responded
23 saying -- acknowledging receipt of the offer, and they formed a
24 committee.

25 I wasn't part of that process so I don't know the details,

K. MUSK - DIRECT / PRICE

1 but they also formed a committee.

2 **Q.** Okay. And that's what we've heard as being referred to as
3 the special committee?

4 **A.** Yes, that's correct.

5 **Q.** And that's something you were not involved with; correct?

6 **A.** Not at all.

7 **Q.** You were recused from that committee as well; correct?

8 **A.** Yes.

9 **Q.** Were you a part of any Board of Director decisions about
10 whether to make public statements about the offer to go private
11 or about hiring financial advisors to represent the company or
12 any other Board reactions related to this potential
13 transaction?

14 **A.** I was not involved at all with regards to the Board
15 meetings where I was recused. There was a period of time a
16 little bit later in August where I did attend meetings, a Board
17 meeting where I believe Silver Lake and Goldman Sachs
18 presented.

19 **Q.** So I also want to ask you a few questions about
20 August 7th. We're here because there were some tweets that
21 your brother made on August 7th.

22 Did you see those tweets at the time?

23 **A.** I do recall. I was actually offline. I saw them a few
24 hours after they came out.

25 **Q.** And at the time you read those tweets, in your view, was

K. MUSK - CROSS / TRIPODI

1 there anything in those tweets that was not consistent with
2 what you knew were the true state of affairs?

3 **A.** It was completely consistent with the meeting on
4 August 3rd. Frankly, I was really excited. I mean, it was
5 very exciting to imagine us being a private company.

6 I was happy for the mission, which was a mission to --
7 which our mission still is to accelerate the world to an
8 alternative energy system. It was better for shareholders and
9 also better for my brother. I was really happy. I was really
10 excited about it.

11 **MR. PRICE:** Okay. No further questions, Your Honor.

12 **THE COURT:** Thank you.

13 Any cross?

CROSS-EXAMINATION

14
15 **BY MS. TRIPODI**

16 **Q.** Good afternoon, Mr. Musk. Nice to see you again.

17 So you've mentioned Elon Musk is your brother. And am I
18 correct that in July of 2018 even you asked your brother to be
19 more thoughtful about his use of Twitter?

20 **A.** Yeah. It was specifically related to exchanging insults
21 with a person, and I felt my brother was above that.

22 **Q.** And you were aware that your brother had a large audience
23 on Twitter, rather many followers; correct?

24 **A.** Sure.

25 **Q.** Outside of the Tesla Board, am I correct that you also

K. MUSK - CROSS / TRIPODI

1 have a strong relationship with Antonio Gracias?

2 **A.** I do.

3 **Q.** And is it fair to say Mr. Gracias is also your brother
4 Elon's friend?

5 **A.** Yes.

6 **Q.** Do you recall -- you mentioned that you were offline when
7 the August 8th tweet came out. Do you recall where you were?

8 **A.** Sorry. The August 7th tweet.

9 **Q.** August 7th. My apologies.

10 **A.** Yes, I was on a hike. I live in Colorado.

11 **Q.** Okay.

12 **MS. TRIPODI:** Thank you. No further questions at this
13 time?

14 **THE COURT:** Thank you.
15 Anything further?

16 **MR. PRICE:** No questions, Your Honor.

17 **THE COURT:** All right. Thank you, Mr. Musk. You are
18 excused. You may step down.

19 **THE WITNESS:** Thank you.
20 (Witness excused.)

21 **THE COURT:** Any further witnesses?

22 **MS. THOMPSON:** Your Honor, Defendants call Defendant
23 Ira Ehrenpreis.

24 **THE COURT:** Okay.
25

EHRENPREIS - DIRECT / THOMPSON

IRA EHRENPREIS,

called as a witness for the Defendants, having been duly sworn,
testified as follows:

THE WITNESS: I do.

THE CLERK: Thank you. Please have a seat.

THE WITNESS: Thank you.

THE CLERK: You're welcome.

Please speak clearly into the microphone. State and spell
your first and last name for the record.

THE WITNESS: Okay. It's Ira Ehrenpreis. I-R-A, last
name is E-H-R-E-N-P-R-E-I-S.

THE COURT: All right. Thank you, Mr. Ehrenpreis.

You may proceed, Counsel.

MS. THOMPSON: Thank you, Your Honor.

DIRECT EXAMINATION

BY MS. THOMPSON:

Q. Mr. Ehrenpreis, where are you from?

A. I've lived in the Bay Area for the last 30 years.

Q. And what do you do for a living?

A. I'm an impact investor. So I invest in companies that try
to achieve both a financial return, but also some form of a
social return or an environmental return. You know,
entrepreneurs that care about one of those two things.

Q. And how long have you been on the Tesla Board of
Directors?

EHRENPREIS - DIRECT / THOMPSON

1 A. Since 2007.

2 Q. Are you an independent director on the Board?

3 A. I am.

4 Q. And what is your day-to-day job?

5 A. I'm an investor investing in purpose-driven or
6 mission-driven companies. We call it impact investing.

7 Q. And how did you first learn in August 2018 that Mr. Musk
8 was considering taking Tesla private?

9 A. He sent an email to the Board. That's when I first
10 learned about it.

11 Q. And what did you understand the Board's job to be when it
12 came to considering this offer from Mr. Musk?

13 A. The Board's job was to undertake a process to figure out
14 what was in the best interests of the shareholders.

15 Q. And did you and the other members of the Board get legal
16 advice how to fulfill your responsibilities in this situation?

17 A. Yes, we did.

18 Q. And in carrying out your duties as a Board member during
19 this period, did you always act in good faith?

20 A. Absolutely.

21 Q. Now, after you received the email from Mr. Musk on
22 August 2nd offering to take Tesla private, was there a meeting
23 that same day?

24 A. Yes, there was.

25 Q. Was Mr. Musk invited to attend that Board meeting?

1 **A.** No.

2 **Q.** Why not?

3 **A.** Well, Elon was a counterparty to -- in this transaction,
4 and so the Board wanted to have a discussion without him.

5 **Q.** And what did you learn at the Board meeting on August 2nd
6 about the transaction?

7 **A.** Deepak Ahuja, who was the then CFO, told us that he and
8 Elon were at a meeting with the Saudi Arabia Sovereign Wealth
9 Fund, that they call PIF, and that at that -- they had
10 discussions for dating back to, I guess, about a year he said.

11 And at that point in time when they met, they were told
12 that the Saudi Arabia fund was ready, willing, able and wanted
13 to move forward to fund Tesla going private and that they had
14 enough money and capital to do the entire thing.

15 **Q.** And was there a Board meeting the next day, August 3rd,
16 that Mr. Musk attended?

17 **A.** He did.

18 **Q.** And what do you recall Mr. Musk telling the Board at the
19 August 3rd Board meeting?

20 **A.** Elon gave the Board a more detailed rationale for why he
21 wanted -- he was considering taking Tesla private. He
22 reiterated what Deepak told us about the Saudi Arabia PIF fund;
23 that they wanted to take Tesla private and that they had enough
24 money to do it themselves.

25 And then Elon described that he wanted a process that

1 actually had the existing shareholders' support. And the idea
2 would be to only have people who didn't want to be private be
3 bought out, but that his hope was that the existing
4 shareholders would largely want to be part of a go-private
5 transaction. And that he also said that he thought that there
6 were a number of both existings and new investors that would be
7 interested in funding a go-private transaction.

8 **Q.** And as to funding, did you have a view on whether Mr. Musk
9 would have any issue in getting funding for a take-private
10 transaction?

11 **A.** I did, because on August 2nd and 3rd we were told by both
12 Deepak and Elon that there was enough funding and interest just
13 from PIF alone to fund the entire transaction.

14 And I've also, having watched Elon, seen that he has more
15 than enough interested investors who want to fund things that
16 he's involved with.

17 **Q.** When you saw the tweets from Mr. Musk on August 7th, did
18 you know that Mr. Musk was going to post those tweets?

19 **A.** No, I didn't.

20 **Q.** And let me show you Exhibit 8, which is in evidence.

21 **MS. THOMPSON:** If we could publish for the jury.

22 (Document displayed.)

23 **BY MS. THOMPSON**

24 **Q.** Mr. Musk writes (as read):

25 "Am considering taking Tesla private. Funding

1 secured."

2 How did you interpret the phrase "funding secured"?

3 **A.** I interpreted it as he felt that there was enough -- what
4 he told us and what Deepak told us at the meetings; that there
5 was -- that funding wasn't an issue because he had enough
6 interest from PIF, and he thought others, to fund the entire
7 transaction.

8 **Q.** Now, in light of Mr. Musk's fundraising track record, how
9 significant would the information that Mr. Musk could obtain
10 the necessary funding be?

11 **MR. APTON:** Objection. Leading.

12 **THE COURT:** Sustained.

13 **BY MS. THOMPSON**

14 **Q.** In your view, how significant was the information that
15 Mr. Musk could obtain the necessary funding be?

16 **MR. APTON:** Objection. Leading.

17 **THE COURT:** Overruled.

18 **A.** I mean, it's quite well known that Elon has a large amount
19 of interest in -- from a funding perspective, from a wide array
20 of investors who want to fund things he's involved with. And
21 what I've seen over a long period of time is there's more
22 interest in funding his endeavors than there is typically
23 amount to be invested.

24 **MS. THOMPSON:** And then if we could show Exhibit 13,
25 which is already in evidence.

1 (Document displayed.)

2 **BY MS. THOMPSON**

3 **Q.** This is another tweet on August 7th linking to a blog
4 post. Mr. Musk writes (as read):

5 "Investor support is confirmed. Only reason why this
6 is not certain is that it's contingent on a shareholder
7 vote."

8 Given that Mr. Musk was only considering taking Tesla
9 private, how did you interpret that second sentence in the
10 tweet?

11 **A.** He had told us that whether or not he wanted to proceed
12 was a function of whether or not the shareholders were
13 supportive. And so I interpreted it as that that was really a
14 primary consideration for him as to whether or not he wanted to
15 move forward, as to whether or not the existing shareholders
16 were supportive to do that.

17 **Q.** And in your view, were the tweets consistent with what you
18 learned at the August 2nd and 3rd Board meeting and with
19 Mr. Musk's offer on August 2nd in the email?

20 **A.** Absolutely.

21 **MS. THOMPSON:** No further questions, Your Honor.

22 **THE COURT:** Thank you.

23 Cross?

24

25

EHRENPREIS - CROSS / APTON**CROSS-EXAMINATION**

BY MR. APTON

Q. Good afternoon, Mr. Ehrenpreis.

A. Good afternoon.

Q. How long have you known Elon?

A. I met Elon -- I didn't know Elon before I got involved in Tesla. And so I joined the Board in 2007, but I didn't know him before that. I've known him since then.

Q. So coming up on 20 years?

A. 2007 to now is 15 years.

Q. Okay. And you are the founder and managing partner of DBL? That's a venture capital firm; is that right?

A. DBL Partners.

Q. And DBL, you got into SpaceX, yes?

A. Yes.

Q. How did you get in there?

A. They were raising around and we invested.

Q. Not everyone can invest directly in SpaceX though; right?

A. Well, typically in private companies everyone can't invest because it typically is institutional capital. And so the fund -- the funds that we represent raise money from pensions and endowments and foundations, and so typically they take money from institutional investors as opposed to public companies where everyone can invest.

Q. Or like a -- I don't know, an ordinary retail investor

1 like myself perhaps?

2 **A.** Well, a retail investor not only can't invest in SpaceX,
3 but basically any of the private companies I've ever invested
4 in were typically the venture capital community investing.

5 **Q.** I see. So small investors cannot invest in private
6 companies, is what you're saying?

7 **A.** There is SEC regulations about being a qualified investor.
8 And typically in order to protect small investors, there's
9 rules around who can invest in private companies as distinct
10 from public companies.

11 **Q.** Do you know who Kathy Wood is?

12 **A.** I do.

13 **Q.** She's a big investor, yeah?

14 **A.** She is. She's -- yeah. I don't know her personally, but
15 I know who she is.

16 **Q.** Sure.

17 Let me continue. Sorry for that. In 2018 you held Tesla
18 shares; correct?

19 **A.** I did.

20 **Q.** Do you know how many?

21 **A.** I don't.

22 **Q.** Does 100,000 sound about right?

23 **A.** I don't know. There's been splits and whatnot. I know
24 that in around that period of time I think most of my holdings
25 were underwater. That means they were in the form of not

1 shares, but options. And because the stock price around that
2 time and thereafter went below the strike price, they were
3 worthless.

4 **Q.** If I told you that in 2018 those holdings were worth about
5 35 million, would that sound correct?

6 **A.** I wouldn't know that, no. Because it obviously moved
7 around and I don't know if you're referring to options or
8 shares. And, as I said, the options ended up being worthless
9 during that period of time and after.

10 **Q.** Okay. Let me ask you this: At the August 3rd meeting,
11 the one that your counsel was just talking to you about, you
12 thought that the proposal from Musk needed to have some more
13 details, some more terms included; correct?

14 **A.** Sure.

15 **Q.** And when Musk a few days later tweeted what he tweeted,
16 "funding secured," at that time you were not aware of any
17 written commitment for financing; correct?

18 **A.** Correct.

19 **Q.** You weren't aware of any specific price that had been
20 discussed with any potential investor; correct?

21 **A.** Correct.

22 **Q.** And the structure he was contemplating, that hadn't been
23 agreed upon with any lawyers or bankers; correct?

24 **A.** Correct.

25 **Q.** And Musk tweeted that tweet in the middle of a trading

1 day, yes?

2 **A.** Yes.

3 **Q.** So I think -- now, would it be your opinion that a more
4 traditional medium of communication would have been appropriate
5 for that tweet? Or for that message, I should say.

6 **A.** You know, I -- I wouldn't probably have an opinion on
7 appropriate medium or not. He uses Twitter. I happen to not
8 use Twitter very much.

9 **Q.** Sure.

10 **A.** But it is a way to disseminate information.

11 **Q.** And now assuming momentarily that there was some policy in
12 place that was requiring some oversight for Musk's Twitter at
13 that time, did anyone check that tweet before it was sent?

14 **A.** Elon sent that tweet in his personal capacity. And any
15 Tesla policy would cover what we have in the company around
16 MNPI, material non-public information, and so there wouldn't
17 have been a Tesla related.

18 **Q.** Right, I understand. So after the fact, everyone knew
19 that he was Tweeting as a bidder, I guess is what you're
20 getting at. But what about before? Did anyone check the tweet
21 before it was sent because? No one knew he was going to be a
22 bidder -- he was going to be Tweeting in his bidder capacity
23 before he sent the tweet?

24 **A.** Well, we did know. That's why we didn't have him in the
25 August 2nd Board meeting, because he was the counterparty. He

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1 was the bidder. The Board knew that, and that's why he wasn't
2 invited to that August 2nd Board meeting.

3 **Q.** So is it your testimony that between his email on
4 August 2nd and the tweet on August 7th, the Board got together
5 and said, "Hey, we're not going to enforce this social media
6 policy anymore"?

7 **A.** Absolutely not.

8 **MS. THOMPSON:** Objection.

9 **A.** The policy was in place as it relates to Tesla, but it
10 wasn't -- that policy, since it was created, since the company
11 went public, does not relate to someone in their personal
12 capacity.

13 **BY MR. APTON**

14 **Q.** But no one checked the tweet before it was sent; correct?

15 **A.** Correct.

16 **Q.** Thank you, sir.

17 **MR. APTON:** No further questions, Your Honor.

18 **THE COURT:** Anything on redirect?

19 **MS. THOMPSON:** No, Your Honor.

20 **THE COURT:** All right. Thank you, Mr. Ehrenpreis.

21 You may step down. You're excused.

22 **THE WITNESS:** Thank you.

23 (Witness excused.)

24 **THE COURT:** We're at our normal break point. I don't
25 know how many more witnesses you have to call.

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1 **MS. THOMPSON:** So, Your Honor, we have one witness who
2 is being called via Zoom. I believe she is ready.

3 **THE COURT:** Oh.

4 **MS. THOMPSON:** And so we can proceed with her, if that
5 makes sense to the Court.

6 **THE COURT:** Let me make sure that the jurors don't
7 need a break right now because we're going at it. How long do
8 you think this witness will be?

9 **MS. THOMPSON:** About the length of the other
10 directors, Your Honor.

11 **THE COURT:** About ten minutes?

12 **MS. THOMPSON:** Yes, Your Honor.

13 **THE COURT:** Can you all wait ten minutes or would you
14 like a break first? Do this now?

15 (Jury panel responding affirmatively.)

16 **MS. THOMPSON:** Thank you, Your Honor.
17 Defendants call Defendant Linda Johnson Rice.

18 **THE COURT:** She will be appearing by Zoom, but this is
19 live?

20 **MS. THOMPSON:** Yes, Your Honor.

21 **THE COURT:** So hopefully the connection will work.

22 (Brief pause.)

23 **THE COURT:** It didn't go quite as smoothly as we
24 thought. Why don't we go ahead and take that break now and
25 when you come back, we'll have it all set up. See you in 20

PROCEEDINGS

1 minutes.

2 **THE CLERK:** All rise for the jury.

3 (Jury exits the courtroom at 12:19 p.m.)

4 **MR. PORRITT:** Similar logistics matter that Mr. Spiro
5 raised earlier. At the close of Defendants' case, assuming
6 this is one more witness, we would intend to make a Rule 50(a)
7 motion.

8 So just in terms of logistics, how Your Honor would like
9 to --

10 **THE COURT:** I'm sorry. What did you say?

11 **MR. PORRITT:** At the close of Defendants' case,
12 Plaintiff intends to make a Rule 50(a) motion.

13 **THE COURT:** Okay.

14 **MR. PORRITT:** So the question is logistics of how Your
15 Honor wants to hear that.

16 **THE COURT:** Well, first of all, you can state it for
17 the record so that the timing is right.

18 In terms of hearing that, I was hoping we could complete
19 the witness stuff, and then I could come back and do the
20 instructions, but I want to leave myself -- if this were ahead,
21 I want to leave enough time to do the instructions. That's
22 probably going to take 40 minutes, something like that.

23 **MR. SPIRO:** I can assure the Court there will be more
24 than enough time because of where we are.

25 **THE COURT:** So what I think I'll do is I'll take a

PROCEEDINGS

1 break. If you close with your final witness and there's no
2 rebuttal witnesses, we'll tell the jury that the evidence has
3 been completed. Take a little break. I will tell them when
4 they come back we'll instruct them.

5 And during that break, you can elaborate -- well, actually
6 you can make your motion at that point.

7 **MR. PORRITT:** Very good, Your Honor.

8 **THE COURT:** So just one more witness?

9 **MR. SPIRO:** Yes, Your Honor.

10 **THE COURT:** And no rebuttal witnesses?

11 **MR. PORRITT:** No rebuttal witnesses.

12 **THE COURT:** Great.

13 (Whereupon there was a recess in the proceedings
14 from 12:21 p.m. until 12:42 p.m.)

15 **THE COURT:** Okay. Before we bring the jury back, I
16 have now e-filed the closing jury instructions so you all have
17 a copy of that. I believe we're actually going to make some
18 hard copies for your benefit.

19 And one thing that I like to do is to have the Jury
20 Instructions up on the screen, and so through Vicky either we
21 will do that or she's going to recruit one of you all to help.

22 **THE CLERK:** I will recruit one of the techs.

23 **THE COURT:** She's going to recruit one of your techs
24 to help us scroll through so that it's up on the display as I
25 read it.

PROCEEDINGS

1 I'm going to read all the way up through Duty to
2 Deliberate, which is Instruction Number 17. I will save the
3 last five instructions to the final-final. That's after
4 closing arguments are made.

5 So we're going to bring the jury back in, take testimony
6 from Ms. Rice, and I believe Defendants will close their case.
7 I'll excuse the jury for a short break. Plaintiff make your
8 motion. Then we'll call the jury in and deliver the
9 instructions.

10 And I think we'll have enough time to do that. Okay?

11 (Jury enters the courtroom at 12:52 p.m.)

12 **THE COURT:** Have a seat everyone. Welcome back.

13 We now have our system hooked up for the next witness, who
14 is appearing, and we're on live.

15 I guess the question is: Can we enlarge her -- pin her
16 screen so the jury can see the witness?

17 There we go. Thank you.

18 Why don't you formally call your next witness.

19 **MS. THOMPSON:** Yes, Your Honor. We call Defendant
20 Linda Johnson Rice.

21 **THE COURT:** All right. Thank you.

22 Ms. Rice, good afternoon.

23 **THE WITNESS:** How are you?

24 **THE COURT:** Good. Thank you.

25 Oh, the jury can't see.

RICE - DIRECT / THOMPSON

1 (Brief pause.)

2 **THE CLERK:** I guess it would be nice if I turn the
3 monitors on.

4 **THE COURT:** How about now? No?

5 **THE CLERK:** It takes a few seconds to go on.
6 There we go.

7 **THE COURT:** Okay. Now we're all square.

8 And so first we have to have Ms. Rice take the oath, which
9 will be administered by Ms. Ayala.

10 **LINDA JOHNSON RICE,**
11 called as a witness for the Defendants, having been duly sworn,
12 testified via Zoom as follows:

13 **THE WITNESS:** I do.

14 **THE CLERK:** Thank you.

15 Please state and spell your first and last name for the
16 record.

17 **THE WITNESS:** Linda Johnson Rice. L-I-N-D-A,
18 J-O-H-N-S-O-N, R-I-C-E.

19 **THE COURT:** All right. Thank you, Ms. Rice.
20 You may proceed, Counsel.

21 **MS. THOMPSON:** Thank you, Your Honor.

22 **DIRECT EXAMINATION**

23 **BY MS. THOMPSON**

24 **Q.** Good afternoon, Ms. Rice. Ellyde Thompson for the
25 Defendants.

RICE - DIRECT / THOMPSON

1 Ms. Rice, you are not here in San Francisco testifying
2 today. Why is that?

3 A. It is because I am visually impaired. I'm actually blind
4 in one eye and compromised in the other, and I was unable to
5 have a companion, a traveling companion, to go with me. I
6 cannot move around and travel by myself.

7 Q. And when did your visual impairment occur?

8 A. About a year and a half ago. Two years at the most.

9 Q. Would you have preferred to be here in person if it were
10 not difficult for you to travel?

11 A. Yes, of course.

12 Q. Now, Ms. Rice, were you formerly a member of the Tesla
13 Board of Directors?

14 A. Yes.

15 Q. During what time period were you a member of Tesla's
16 Board?

17 A. From 2017 to 2019. Approximately two years.

18 Q. And had you met Mr. Musk before you joined Tesla's Board?

19 A. No.

20 Q. Were you an outside director on Tesla's Board?

21 A. Yes.

22 Q. Did you have any role in the day-to-day management of
23 Tesla?

24 A. No.

25 Q. What was your day-to-day job during the time you were on

1 the Tesla Board?

2 **A.** Chairman and CEO of Johnson Publishing Company.

3 **Q.** Turning your attention to August 2018, do you recall the
4 Board receiving an email from Mr. Musk on August 2nd offering
5 to take Tesla private?

6 **A.** I do.

7 **Q.** And do you recall two Board meetings on August 2nd and 3rd
8 after the Board received the email offer from Mr. Musk?

9 **A.** Yes.

10 **Q.** And what did you learn at the two Board meetings on
11 August 2nd and 3rd about funding for a transaction to take
12 Tesla private?

13 **A.** My understanding from the meetings was that Mr. Musk had
14 discussed this transaction with a PIF, I think it's Saudi
15 Arabian, and they were interested and very sincere and
16 forthright and wanting to fund the transaction and take -- help
17 him take the company private.

18 **Q.** And who conveyed that information to the Board on
19 August 2nd and August 3rd?

20 **A.** On August 2nd I believe it was the CFO Deepak Ahuja, and
21 on August 3rd it was Mr. Musk.

22 **Q.** And what was your understanding at the time about whether
23 the Saudi Arabian PIF, the Public Investment Fund, had the
24 money necessary to take Tesla private?

25 **A.** My understanding was that they were -- they had the

1 funding, and that -- I believe they already owned about maybe 4
2 to 5 percent of the company already and were prepared to fund
3 the entire transaction.

4 **Q.** I'm going to read two tweets that are already in evidence.
5 The first one is Exhibit 8. It says (as read):

6 "Am considering taking Tesla private at \$420. Funding
7 secured."

8 The second one is Exhibit 13 (as read):

9 "Investor support is confirmed. Only reason this is
10 not certain is that it's contingent on a shareholder
11 vote."

12 These are two tweets that Mr. Musk published on
13 August 7th. Did you know Mr. Musk was going to publish these
14 tweets before he posted them on Twitter?

15 **A.** I did not.

16 **Q.** Did you view these tweets at the time as consistent with
17 the information you had received from Mr. Ahuja and Mr. Musk
18 about funding the transaction?

19 **A.** Yes.

20 **Q.** Ms. Rice, I have no further questions. Thank you.

21 **THE COURT:** All right. Thank you.

22 Any cross examination?

23 **MS. TRIPODI:** Nothing on cross, Your Honor.

24 **THE COURT:** All right. Then thank you, Ms. Rice. You
25 are excused as a witness.

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1 **THE WITNESS:** Thank you very much.

2 **THE COURT:** I appreciate your attendance. Thank you.

3 **THE WITNESS:** Thank you. Bye-bye.

4 (Witness excused.)

5 **THE COURT:** All right. Any further witnesses?

6 **MR. SPIRO:** Your Honor at this time, and I've tried to
7 do this before, but Exhibit 322, which is the Saudi Arabia
8 Sovereign Fund announcement article we've talked about in this
9 trial is not yet in evidence. We would offer it into evidence.
10 That's Exhibit 322, which I understand, moving past objections,
11 is fine with plaintiffs.

12 And at this time the Defense rests.

13 **THE COURT:** All right. And no objection to 322?

14 **MR. PORRITT:** No objection, Your Honor.

15 **THE COURT:** All right. So 322 is admitted.

16 (Trial Exhibit 322 received in evidence.)

17 **THE COURT:** Any further witnesses from the Plaintiff?

18 **MR. PORRITT:** Plaintiff calls no further witnesses,
19 Your Honor.

20 **THE COURT:** All right. Well, thank you.

21 So, members of the jury, that will conclude the
22 presentation of evidence in this case. I'm going to, since
23 there is still time, to give you the instructions on the law as
24 I promised I would.

25 But before that, we're going to take yet another break,

PROCEEDINGS

1 but there will be time enough. We'll be done before the 2:00
2 o'clock hour.

3 The plan at this point is that I will give you some
4 instructions, closing instructions. And then first thing on
5 Friday morning, you'll hear closing statements from each side.
6 And then I will give you a final-final set of instructions
7 about what to do in terms of procedure, and the case will then
8 be delivered to you for deliberation with the evidence.

9 And I believe we have prepared a little index -- hopefully
10 that will be done -- so that if you're looking for a particular
11 piece of evidence, you'll have a list and a brief description.

12 And that's the process.

13 So as I mentioned yesterday, in terms of hours, once this
14 case is given to you, you set the hours. So if you want to
15 stay past 2:00 o'clock, we'll be here. But that might be one
16 thing to consider and see before you leave today, whether
17 that -- so everybody can plan for tomorrow.

18 But that's the plan. We give the instructions this
19 afternoon, and then you'll hear closing statements or closing
20 arguments Friday, and you will have the case by Friday. Okay?

21 So let's just take a -- maybe a ten-minute break this time
22 and then we'll come back. Thank you.

23 **THE CLERK:** All rise for the jury.

24 (Jury exits the courtroom at 1:01 p.m.)

25 **THE COURT:** Okay. Make your motion.

PROCEEDINGS

1 **MR. APTON:** Thank you, Your Honor.

2 For Plaintiff at this time we want to file or move and we
3 hereby move under Rule 50(a). We believe that we are entitled
4 to judgment as a matter of law on two issues: One being
5 reliance, both class-wide and individual reliance, and the
6 second being materiality.

7 The reliance issue, Your Honor, we have put forth
8 evidence, testimony from Dr. Hartzmark showing that the market
9 was efficient for both stock options and bonds. We're entitled
10 to the "fraud on the market" presumption.

11 Your Honor denied our previous motion for summary judgment
12 on that issue because the Court understandably wanted to give
13 Defendants an opportunity to rebut the presumption at trial.
14 They have not put forward any evidence, no expert testimony,
15 saying that the market was not efficient or that the
16 presumption should otherwise not stand.

17 We also have testimony from Glen Littleton, our lead
18 plaintiff, who says he directly relied on the tweet. So in
19 addition to having a presumption of reliance in his favor, he
20 also has an individual reliance, director reliance.

21 On the topic of materiality, Your Honor, we have a lot of
22 evidence, a significant amount of evidence, showing just how
23 material both these tweets were. Within moments of them being
24 made, the market reacted very strongly, immediately.

25 So quantitative evidence through statistical analysis

PROCEEDINGS

1 shows that the stock price reacted sharply and immediately to
2 these two tweets.

3 Qualitatively, we also have a ton of evidence. We have
4 emails, analyst reports, internal correspondence within Tesla
5 saying the market was laser focused on this "funding secured"
6 announcement. Very interested in hearing more information on
7 what "investor support confirmed" actually meant.

8 And so with that evidence, Your Honor, we think it
9 establishes quite clearly that these two tweets were material
10 and that Defendants have not put forward any evidence showing
11 that they were not material.

12 And this is separate and apart from the issues of loss
13 causation and damages. We're just focusing on materiality at
14 the time the tweets were made on August 7th.

15 **THE COURT:** All right. Thank you.

16 Response?

17 **MS. THOMPSON:** Yes, Your Honor.

18 Let me address reliance first. First, there is no
19 evidence that Tesla bonds were traded on an active open market.
20 No one opined on that issue and, therefore, there can be no
21 testimony in the record on that issue.

22 Also, if it's helpful to the Court, let me point the Court
23 to Pages 11 through 14 of the 50(a) motion, which we filed,
24 which indicates judgment as a matter of law should be granted
25 in favor of Defendants. And I would also at this time like to

PROCEEDINGS

1 renew Defendant's 50(a) motions on all the grounds I mentioned
2 previously.

3 So there's no evidence that Tesla bonds traded in an
4 active and open market. There is certainly a dispute as to
5 whether reliance such that the "fraud on the market"
6 presumption ended August 13 is an open question for the jury to
7 resolve.

8 There is insufficient evidence to establish materiality.
9 I'll get to that very briefly in a moment.

10 But Mr. Apton ignores entirely part of the Court's
11 instruction and a key part of the law on this issue, which is
12 whether the statements that are alleged to be false differ in a
13 significant way from the actual state of affairs.

14 I think what the evidence has shown most clearly is that
15 the way everyone interpreted these tweets, the state of affairs
16 was actually identical to what Mr. Musk tweeted on August 7th.

17 So there's insufficient evidence to establish materiality
18 both for the "fraud on the market" presumption and, therefore,
19 there can be no judgment as a matter of law on that and also,
20 of course, as to materiality.

21 And then plaintiffs have failed to prove the remaining
22 elements of fraud on the market, which are the listed out on
23 the Court's Jury Instructions.

24 As to materiality, first of all, Mr. Apton noted the stock
25 price increase or reaction. And I think even as to the

PROCEEDINGS

1 quantitative evidence, there is no sufficient evidence of
2 materiality for judgment as a matter of law to be granted.

3 I'll give the Court a few brief examples. And I
4 apologize. I know I'm going quickly. But, first, there is no
5 disaggregation of the true statement "Am considering taking
6 Tesla private at \$420." That in itself could explain any stock
7 price reaction.

8 Second, in connection with the second tweeted issue, there
9 was a Tesla blog post around that same time. There has been no
10 indication that any stock reaction was as to the blog post, as
11 to the tweet. So that's on the quantitative side.

12 And then, of course, on August 13th when the truth is,
13 quote/unquote, revealed, the stock price goes up. On the
14 quantitative side no sufficient evidence of materiality and, in
15 fact, judgment as a matter of law should be granted in favor of
16 Defendants on that point.

17 But just as to the qualitative evidence, again, what the
18 Court has seen from witness after witness after witness is that
19 what the market understood these tweets to mean is exactly what
20 the state of affairs was. And so there can be no sufficient
21 evidence of materiality and judgment as a matter of law. In
22 fact, it should be granted in favor of Defendants on that
23 point.

24 **THE COURT:** All right. Thank you, Ms. Thompson. I
25 appreciate it.

PROCEEDINGS

1 I will take that motion as well under submission.

2 **MR. APTON:** Thank you, Your Honor.

3 **THE COURT:** So it's made for the record.

4 And so we have -- you should have a copy available to
5 you -- I'll bring it in if we have extra copies -- of the Jury
6 Instructions. I'm going to read Number 1 through Number 16.

7 And have you recruited somebody, Vicky, to display it on
8 the screen?

9 **THE CLERK:** Yes.

10 Thank you, Derek.

11 **THE COURT:** I want the jury to see it as well as hear
12 it.

13 So that is my plan at this point. And then just roughly,
14 how much time -- I don't know how much time is left, but I
15 don't know how long --

16 **THE CLERK:** I'm doing it right now.

17 **THE COURT:** We'll let you know before you leave how
18 much time is left. That dictates certain parameters in terms
19 of your closing. All right?

20 **MR. APTON:** Thank you, Your Honor.

21 **MS. THOMPSON:** Thank you, Your Honor.

22 **THE COURT:** All right. Let's bring the jury in.

23 (Jury enters the courtroom at 1:14 p.m.)

24 **THE COURT:** All right. Have a seat, everyone.

25 Welcome back, members of the jury.

JURY INSTRUCTIONS

1 I am now going to give you instructions on the law that
2 applies to this case. And for your convenience and benefit
3 we're going to also scroll the written instructions so you
4 will -- you can see it as well as hear it.

5 You will also be given copies of -- several copies of
6 these instructions at the end of the case. So you'll have that
7 as well.

JURY INSTRUCTIONS

8
9 **THE COURT:** All right. First - Duty of the Jury.

10 Members of the jury, now that you have heard all the
11 evidence, it is my duty to instruct you on the law that applies
12 to this case.

13 A copy of these instructions will be sent to the jury room
14 for you to consult during your deliberations.

15 It is your duty to weigh and to evaluate all the evidence
16 received in the case and in that process to decide the facts.
17 It is also your duty to apply the law as I give it to you to
18 the facts as you find them, whether you agree with the law or
19 not.

20 You must decide the case solely on the evidence and the
21 law. Do not allow personal likes or dislikes, opinions,
22 prejudices, sympathy, or bias, including unconscious biases,
23 influence you. Unconscious biases are stereotypes, attitudes,
24 or preferences that people may consciously reject but may be
25 expressed without conscious awareness, control, or intention.

JURY INSTRUCTIONS

1 Like conscious bias, unconscious bias, too, can affect the way
2 we evaluate information and make decisions.

3 You should also not be influenced by any person's race,
4 color, religion, national ancestry, gender, sexual orientation,
5 profession, occupation, celebrity, economic circumstances, or
6 position in life or in the community.

7 Do not be afraid to examine any assumptions you or other
8 jurors have made which are not based on the evidence presented
9 at trial. You'll recall that you took an oath promising to do
10 so at the beginning of the case.

11 You must follow all these instructions and not single out
12 some and ignore others. They are all important. Please do not
13 read into these instructions or anything I may have said or
14 done any suggestion as to what verdict you should return. That
15 is a matter entirely up to you.

16 Documents and Testimony Not in Evidence.

17 In reaching your verdict, you may consider only the
18 testimony and exhibits received into evidence. Certain things
19 are not evidence, and you may not consider them in deciding
20 what the facts are. I will list them for you.

21 Number one, arguments and statements by lawyers are not
22 evidence. The lawyers are not witnesses. What they have said
23 in their opening statements, closing arguments, and at other
24 times is intended to help you interpret the evidence, but it is
25 not evidence. If the facts as you remember them differ from

JURY INSTRUCTIONS

1 the way the lawyers have stated them, your memory controls.

2 Two, questions and objections by lawyers are not evidence.
3 Attorneys have a duty to their client to object when they
4 believe a question is improper under the Rules of Evidence.
5 You should not be influenced by the objection or by the Court's
6 ruling on it.

7 Three, testimony that is excluded or stricken or that you
8 have been instructed to disregard is not evidence and must not
9 be considered. In addition, some evidence was received only
10 for a limited purpose. If I have instructed you to consider
11 certain evidence only for a limited purpose, you must do so and
12 you may not consider the evidence for any other purpose.

13 Four, anything you may have seen or heard when court is
14 not in session is not evidence. You are to decide the case
15 solely on the evidence received at the trial.

16 SEC Investigation.

17 During the course of the trial, you have heard testimony
18 and seen evidence related to an investigation by the U.S.
19 Securities and Exchange Commission. You have not heard or seen
20 any evidence about how the SEC's investigation concluded. You
21 should not make any assumptions about the outcome of the SEC
22 investigation.

23 Burden of Proof - Preponderance of the Evidence.

24 When a party has the burden of proving any claim or
25 affirmative defense by a preponderance of the evidence, it

JURY INSTRUCTIONS

1 means that you must be persuaded by the evidence that the claim
2 or affirmative defense is more probably true than not true.

3 You should base your decision on all of the evidence,
4 regardless of which party presents it.

5 Corporate Entities.

6 One of the parties in this case, Tesla, Inc., is a
7 corporation. Under the law, a corporation is considered to be
8 a person. All parties are equal under the law and a
9 corporation is entitled to the same fair and conscientious
10 consideration by you as any party.

11 Under the law, a corporation can act only through its
12 employees, agents, directors, or officers. Therefore, a
13 corporation is responsible for the acts of its employees,
14 agents, directors, and officers performed within the scope of
15 their authority.

16 An officer of a company is acting within the scope of
17 authority if the officer is engaged in the performance of
18 duties which were expressly or impliedly assigned to the
19 officer by the company.

20 If you find against Mr. Musk but do not find that Mr. Musk
21 was acting within the scope of authority as an officer of
22 Tesla, then you must find that Tesla is not liable.

23 Rule 10b-5 Claim.

24 The buying and selling of securities is controlled by the
25 securities laws. A 10b-5 claim is a claim brought under a

JURY INSTRUCTIONS

1 federal statute, Section 10b of the Securities Exchange Act of
2 1934, which in essence prohibits acts of deception in
3 connection with the purchase or sale of a security and in
4 violation of rules and regulations that the SEC has the duty
5 and power to issue.

6 A corresponding SEC rule, Rule 10b-5, prohibits the
7 misrepresentation of material facts and the omission of
8 material facts in connection with the purchase or sale of
9 securities. A person or business entity who violates the
10 securities laws, including Rule 10b-5, may be liable for
11 damages caused by the violation.

12 Plaintiff alleges that Elon Musk and Tesla, Inc. violated
13 10b-5 and harmed investors by making materially false and
14 misleading statements about a proposed going-private
15 transaction and its financing. This is referred to as, quote,
16 Plaintiffs' 10b-5 claim, close quote.

17 On this claim, the Plaintiff has the burden of proving
18 each of the following elements by a preponderance of the
19 evidence:

20 One, Elon Musk and/or Tesla made untrue statements of a
21 material fact in connection with the purchase or sale of
22 securities;

23 Two, Elon Musk and/or Tesla acted with the necessary state
24 of mind (i.e., knowingly or with reckless disregard for the
25 truth or falsity of the statements);

JURY INSTRUCTIONS

1 Three, Elon Musk and/or Tesla used an instrument of
2 interstate commerce in connection with the sale and/or purchase
3 of Tesla securities;

4 Four, Plaintiff justifiably relied on Elon Musk and/or
5 Tesla's untrue statements of material fact in buying or selling
6 Tesla securities during the class period; and,

7 Five, Elon Musk and/or Tesla's misrepresentations caused
8 Plaintiff to suffer damages.

9 An instrumentality of interstate commerce includes postal
10 mails, Elon Musk's emails, telephone, telegraph, telefax,
11 interstate highway system, internet, or similar methods of
12 communications, and travel from one state to another within the
13 United States.

14 You are to assume the statements "Funding secured" and
15 "Investor support is confirmed. Only reason why this is not
16 certain is that it's contingent on a shareholder vote" were
17 untrue, but you must -- you still must decide whether these
18 statements were of material facts.

19 You must also assume Mr. Musk acted with reckless
20 disregard for whether the statements were true, but you must
21 still decide whether he knew that the statements weren't true.

22 Maker of Misstatement.

23 To be liable under 10b -- for a Section 10b violation, the
24 Plaintiff must prove that the Defendant was the maker of a
25 materially false or misleading statement. A Defendant makes a

JURY INSTRUCTIONS

1 statement if the Defendant has ultimate authority over the
2 statement, including its content and whether and how to
3 communicate it.

4 Material Misrepresentation.

5 Plaintiff must prove by a preponderance of the evidence
6 that Elon Musk and/or Tesla's misrepresentation of a fact was
7 material.

8 A factual representation concerning a security is material
9 if there is a substantial likelihood that a reasonable investor
10 would consider the fact important in deciding whether to buy or
11 sell that security.

12 A material misrepresentation gives a reasonable investor
13 the impression of a state of affairs that differs in a material
14 way from the one that actually exists.

15 A factual representation can be untrue but not material.
16 For instance, if a company inaccurately reports its revenue,
17 that representation is untrue. The factual representation
18 would be material if the difference between the disclosed
19 revenue and the accurate revenue is significant enough to
20 influence a reasonable investor's decision whether to buy or
21 sell securities in that company. If not, it would not be
22 material.

23 You must decide whether something was material based on
24 the circumstances as they existed at of the statement.

25 Scienter or State of Mind.

JURY INSTRUCTIONS

1 Plaintiff must prove by a preponderance of the evidence
2 that Elon Musk and/or Tesla acted with a necessary state of
3 mind, which is known as scienter. Scienter may be established
4 by showing either:

5 One, the Defendant knew his untrue statement was false;
6 or,

7 Two, the Defendant acted -- it should be with reckless
8 disregard for whether the statement was true.

9 "Reckless" means highly unreasonable conduct that is an
10 extreme departure from ordinary care, presenting a danger of
11 misleading investors, which is either known to the Defendant or
12 is so obvious that the Defendant must have been aware of it.

13 You are to assume that Elon Musk made the statement
14 "funding secured" and "Investor support is confirmed. Only
15 reason why this is not certain is that it's contingent on a
16 shareholder vote" with at least reckless disregard for whether
17 the statements were true, but you still must decide whether
18 Mr. Musk acted knowingly.

19 Imputation of Scienter.

20 A corporation can only act through its employees, agents,
21 directors, and officers and can likewise only have scienter
22 through them.

23 If you find that Elon Musk acted with scienter and was
24 acting within the scope of his authority while Tweeting the
25 statements at issue on August 7th, then his scienter may be

JURY INSTRUCTIONS

1 imputed to Tesla. If you find that Elon Musk acted with
2 scienter but was not acting within the scope of his authority
3 while Tweeting the statements at issue on August 7th, then his
4 scienter cannot be imputed to Tesla.

5 Reliance.

6 Plaintiff must prove by a preponderance of the evidence
7 that he relied on Defendant's alleged material
8 misrepresentations and that Plaintiff was justified in doing
9 so. Plaintiff does not have to show that he and other members
10 of the class individually relied on the false and/or materially
11 misleading statements at issue if he proves the requirements
12 for invoking a presumption that he and the class relied on the
13 integrity of the market price, otherwise known as the "fraud on
14 the market" presumption.

15 If you find that Plaintiff has proven by a preponderance
16 of the evidence that, one, an active open market for Tesla
17 securities existed at the time of the transactions in question;
18 two, investors reasonably relied on that market as an accurate
19 reflection of the current market value of the securities;
20 three, the misrepresentations were publicly known and material,
21 meaning that a reasonable investor would have regarded the
22 misrepresentation as having significantly altered the total mix
23 of information they took into account in deciding whether to
24 buy or sell the Tesla security; and, four, the Plaintiff traded
25 the security between when the alleged material

JURY INSTRUCTIONS

1 misrepresentations were made and when the truth was revealed,
2 then the "fraud on the market" presumption applies. This means
3 that you may find that Plaintiff has proved that he relied on
4 Defendant's statements.

5 An "active, open market" means there were a large number
6 of traders, a high level of activity, and frequent trades such
7 that the price of the security immediately reflects all
8 publicly available information.

9 Defendants may rebut the presumption that Mr. Littleton
10 relied on the integrity of the market price when purchasing
11 Tesla securities by proving by a preponderance of the evidence
12 that Mr. Littleton did not actually rely on the integrity of
13 the market price when he purchased Tesla securities. In that
14 event, Mr. Littleton must then prove that he justifiably relied
15 directly on the misrepresentation.

16 Defendants may also rebut the presumption that the
17 Plaintiff class relied on the integrity of the marketplace when
18 purchasing Tesla securities by proving by a preponderance of
19 the evidence that the misrepresentation did not affect the
20 market price of Tesla's stock.

21 The "fraud on the market" presumption of reliance is
22 limited to the time between when the misrepresentation was made
23 and when the truth was revealed.

24 Loss Causation.

25 Plaintiff must prove by a preponderance of the evidence

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1 that Mr. Musk and/or Tesla's misrepresentations caused their
2 economic injury. To establish causation, Plaintiff must prove
3 that the misrepresentations played a substantial part in
4 causing the jury or loss that Plaintiff suffered.

5 Plaintiff must reasonably distinguish any security price
6 reaction to the misrepresentations at issue from the market's
7 reaction to other factors, such as other information or events
8 that could affect the price of Tesla securities.

9 Plaintiff need not prove that the misrepresentations were
10 the sole cause of the economic injuries.

11 Damages.

12 If you find for Plaintiff on the 10b-5 claim against Elon
13 Musk and/or Tesla, then you must consider and decide the amount
14 of damages to be awarded to the Plaintiff and the class. You
15 may award only actual damages in that amount which will
16 reasonably and fairly compensate Plaintiff and the class for
17 the economic losses they sustained.

18 Actual damages are measured by the amount of inflation or
19 deflation caused by the misrepresentations on which you base
20 your finding of a 10b-5 claim. In other words, actual damages
21 are measured by the difference between the price at which the
22 security sold and the price at which the security would have
23 been sold absent the alleged material misrepresentations.

24 There are three categories of securities about which you
25 will be asked to render a verdict on damages:

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1 One, Tesla common stock;
2 Two, Tesla convertible bonds; and,
3 Three, Tesla stock options.

4 A stock option is a financial instrument that gives its
5 buyer (known as the option holder) the right, but not the
6 obligation, to buy or sell stock at a predetermined price at or
7 until a specified date and time in the future.

8 The price of a stock option is primarily determined by two
9 facts: The price of the stock at the time the option is
10 purchased and the implied volatility of the stock. Implied
11 volatility is the market's forecast of a likely movement in a
12 security's price.

13 You will be asked to determine the amount, if any, by
14 which the prices of Tesla common stock and convertible bonds
15 were artificially inflated by the misrepresentations on which
16 you base your finding of a 10b-5 claim for each day during the
17 class period.

18 You will also be asked to determine what the levels of
19 implied volatility for each Tesla stock option would have been
20 for each option maturity bought or sold during the class period
21 "but for" the misrepresentations.

22 Plaintiff bears the burden of proving that the
23 misrepresentations caused a change in the implied volatility
24 for each option maturity on each day of the class period. The
25 Court will use your determinations of price inflation and

JURY INSTRUCTIONS

1 implied volatility to calculate the damages suffered by the
2 Plaintiff and the class in connection with the purchase --
3 purchases and sales of Tesla securities during the class
4 period.

5 Your award must be based on evidence and not upon
6 speculation, guesswork, or conjecture.

7 Damages need not be proven with mathematical certainty,
8 but there must be enough evidence for you to make a reasonable
9 estimate of damages.

10 Plaintiff has the burden of proving damages by a
11 preponderance of the evidence. Plaintiff also has the burden
12 of separating out the price decline, if any, caused by factors,
13 if any, other than the alleged misrepresentations.

14 Control Person Liability.

15 Under Section 20(a) of the Securities Exchange Act of
16 1934, a Defendant may be liable as a "controlling person" if
17 during the period that someone else violated Rule 10b-5 the
18 Defendant had the authority to control that person or company.

19 A controlling person is an individual or company that
20 possesses the power to direct the management and policies of a
21 business enterprise or of another person involved in the
22 management or policymaking of the enterprise.

23 Plaintiff claims that Tesla's Board of Directors were
24 controlling persons of Tesla and are, therefore, liable under
25 the securities laws for any violations of Rule 10b-5 committed

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1 by Tesla. This is referred to as "The Plaintiff's Section
2 20(a) claim."

3 On this claim plaintiff has the burden of proving by a
4 preponderance of the evidence that each Tesla director
5 possessed, directly or indirectly, the actual power to direct
6 or cause the direction of the management and policies of Tesla
7 where Tesla is liable on Plaintiff's Rule 10b-5 claim.
8 Plaintiff does not need to prove that any Tesla director
9 actually exercised that power.

10 Defense to Control Person Liability.

11 Even if you find that any Tesla director is a controlling
12 person, you must still find that the Tesla director -- you must
13 still find that Tesla director not liable if that Tesla
14 director establishes the defense to control person liability.
15 Under the defense to control person liability, each of Tesla's
16 directors has the burden of proving both the following elements
17 by a preponderance of the evidence:

18 One, he or she did not directly or indirectly induce the
19 10b-5 violation; and,

20 Two, he or she acted in good faith.

21 The director can prove good faith by establishing that he
22 or she maintained and enforced a reasonable and proper system
23 of supervision and internal control.

24 If the director is found to have been involved in making a
25 statement which violates Section 10b-5, that director can prove

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1 good faith by showing a lack of scienter; i.e., that the
2 director did not know that the statement was false, nor did the
3 director have reckless disregard for whether the statement was
4 true.

5 If you find that a Tesla director has proved both of these
6 elements, your verdict should be for that director. If you
7 find that a director has failed to prove either or both of
8 these elements, your verdict should be for Plaintiff.

9 Apportionment of Liability.

10 If you find that Plaintiff proved the 10b-5 claim against
11 Tesla or Mr. Musk and/or Section 20(a) claims against the other
12 Defendants, then you must take two more steps.

13 First, you must determine whether any Defendant knowingly
14 violated any securities law. A Defendant commits a knowing
15 violation of the securities laws when (1) they make an untrue
16 statement of a material fact with actual knowledge that the
17 representation is false; and (2) persons are likely to
18 reasonably rely on that misrepresentation.

19 Second, you must determine what percentage of
20 responsibility, if any, to assign to each Defendant whom you
21 have found to be liable (including those who have acted with
22 reckless disregard).

23 When apportioning responsibility, the percentages you
24 calculate must total 100 percent among the parties you find
25 responsible, even if you believe some of the Defendants are

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1 zero percent responsible.

2 In determining the percentage of responsibility, you must
3 consider the nature of the conduct of each person you determine
4 caused or contributed to the losses, if any, incurred by the
5 Plaintiff and the nature and extent of the causal relationship
6 between that person's conduct and the losses, if any, incurred
7 by Plaintiff.

8 If you determine that any person's actions and omissions
9 did not proximately contribute to the loss incurred by
10 Plaintiff, then you are to assign zero percent responsibility
11 to that person.

12 All right. So those are the instructions on the law. I
13 will give you some final-final instructions tomorrow after we
14 hear each party's closing arguments.

15 Until then, my admonition still applies. Since this case
16 has not been submitted to you quite yet for deliberation,
17 please still observe my direction that you are not to talk
18 about this case at this point with anyone, including amongst
19 yourselves or with anybody else. Do not listen to, read, or
20 follow any coverage of this trial. Do not attempt to do any
21 research on your own, and do not form any opinions until this
22 case is submitted to you for deliberation on Friday. So we'll
23 see you at 8:30 on Friday.

24 And, again, I don't know if you've already discussed, but
25 if you would like to stay later than 2:00 o'clock on Friday,

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1 you're certainly welcome to do so.

2 Til then, tomorrow you have a day off, but we'll see you
3 on Friday. Thank you.

4 **THE CLERK:** All rise for the jury.

5 (Jury exits the courtroom at 1:37 p.m.)

6 **THE COURT:** Okay. We should be clear on time
7 limitation here so each party knows.

8 **THE CLERK:** One second.

9 **THE COURT:** Okay.

10 **THE CLERK:** I had to submit the jury's lunch order.

11 **THE COURT:** Oh, that's more important. The jury's
12 lunch order.

13 **MR. SPIRO:** Oh, yes.

14 **THE COURT:** Yeah, that's --

15 **MR. SPIRO:** No question.

16 Can we discuss a couple other things?

17 **THE COURT:** Yeah. Yeah.

18 **MR. SPIRO:** So the first is, just so the Court's
19 clear, we object to the jury getting copies of the
20 instructions. It's not done in the ordinary course in my
21 experience, and we object to it.

22 **THE COURT:** Okay. Well, it's done in the ordinary
23 course here, and I believe the Ninth Circuit instructions maybe
24 even indicates.

25 But, in any event, that's my practice. I've never had a

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1 problem with it. And, in fact, I have found that jurors have
2 said it's very useful to have that because often they refer to
3 the instructions because it's hard to remember everything.

4 **MR. SPIRO:** And it may -- and the Court -- it may be
5 the Court's practice in the Northern District of California.
6 I'm obviously relaying my experience across the country.

7 The second thing is just about summation order. I assume
8 we get last-ups because we have the burden of proof on the
9 defense.

10 **THE COURT:** Well, you had burden of proof on the
11 defense. On the other hand, they had burden of proof on just
12 about everything else.

13 **MR. SPIRO:** Yeah, but it's not -- I mean, again,
14 we're -- it's hard to remember sometimes, but we're sort of the
15 Defendants here and Courts, in my experience, and I think, you
16 know, good judgment suggests that given -- you know, we're the
17 ones that have reputation and all sorts of liability and other
18 issues at stake here, that we ought to have, especially when we
19 carry the burden. And so I wouldn't -- I mean, I don't know
20 what the Court's suggested order was, but that's -- that, to
21 me, is clearly what should happen.

22 **MR. PORRITT:** Well, I don't think it's so clear. I'm
23 not surprised they want it here. I think obviously we have the
24 burden on pretty severe elements of the case, and so we would
25 expect to have a rebuttal and have the last -- last closing

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1 statement in that regard.

2 **THE COURT:** All right. I'm going to maintain the -- I
3 don't know what the practice is in the courts that you appear
4 in, but it's the consistent practice here if the Plaintiff has
5 the burden of proof on the claims at issue, even whether there
6 are affirmative defenses, the Plaintiff has an opportunity for
7 rebuttal. So that's what we're going to do.

8 **MR. SPIRO:** So, then one practice that -- I do
9 sometimes try cases in California, too, but the Plaintiff is
10 not allowed to surprise attack during their rebuttal. Meaning,
11 they can't intentionally withhold something from their direct
12 summation and then sandbag the Defense. They can respond to
13 Defense arguments.

14 I assume that is the practice here and with Your Honor. I
15 know there's case law on that, but I just want to make sure
16 that that's not something that we need to be concerned with.

17 **THE COURT:** Well, my presumption is it follows sort of
18 like the scope of redirect. I mean, it's scope questions
19 usually defined, for the most part, by the Defense. The
20 rebuttal is for rebuttal. So you can't give a two-minute
21 opening and an hour rebuttal.

22 **MR. PORRITT:** That's not my intention, Your Honor.

23 **THE COURT:** On the other hand, you know, I don't want
24 to hear objections over, you know, fine degrees of, "Well, we
25 didn't say anything about that in our" -- I mean, you can make

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1 that objection, but I'll probably overrule it.

2 **MR. SPIRO:** I have no intention of objecting during
3 Mr. Porritt's summation. That's why I raise these issues now,
4 so that I don't.

5 **THE COURT:** Okay.

6 **MR. PORRITT:** The only other issue we have is kind of
7 more practical. We were talking about the index of exhibits.
8 And, obviously, we'll work with the -- Ms. Ayala on finalizing
9 the exhibits.

10 **THE COURT:** Yes.

11 **MR. PORRITT:** I thought in terms of the number of
12 demonstratives and in light of the Court's instruction, whether
13 it would be helpful to have -- while clearly indicating they're
14 demonstratives, at least have a list of the demonstratives that
15 were presented by both sides during the course of trial,
16 whether that would be helpful to the jury. That might be a
17 subject we might think about.

18 **THE COURT:** Your response?

19 **MR. SPIRO:** You mean at the end of the index if
20 there's some sort of --

21 **THE COURT:** Yeah. Index of -- you're saying an
22 additional index not only exhibits, but an index of
23 demonstratives?

24 **MR. PORRITT:** Yes. A separate document, if necessary,
25 or the end, one way or the other, but clearly obviously marking

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1 that they're not exhibits.

2 **MR. SPIRO:** I doubt there will be a problem when the
3 parties meet-and-confer --

4 **THE COURT:** Okay.

5 **MR. SPIRO:** -- but I would like to consider that and
6 see what the proposal specifically is.

7 **THE COURT:** All right. I can see a utilitarian value
8 to that. If they ask for a particular -- if they do want a
9 readback, quote/unquote, and look at a demonstrative, they can
10 identify it pretty quickly that way. But why don't you
11 meet-and-confer and see.

12 **MR. PORRITT:** That was our thinking, Your Honor.
13 That's all. I just wanted to raise that now.

14 **MR. SPIRO:** Yeah. I mean, and on this demonstrative
15 point, you know, the titles were argumentative. We had some
16 objections. I don't think we want the titles on there. So I
17 don't know if we want to be, you know, adding to the sheet, you
18 know, suggestions of certain testimony clips either.

19 So the jury has been paying a lot of attention, been
20 taking copious notes. I think they're within the wherewithal
21 to send notes. So I would have to think about the request and
22 consider it, and we have a day to go back and forth on this.

23 The other thing, just so the Court's aware, where
24 Mr. Porritt and I left it, exhibits that are in the case, trial
25 testimony, demonstratives that he's turned over or seen and

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1 vice-versa, we're all good with. There's no issues with any of
2 that at summation obviously, and we don't need to revisit that.

3 If there is a new demonstrative or something, we will
4 confer tomorrow and make sure that each other has seen it.

5 **THE COURT:** Yes. I mean, I do want you all -- if
6 you're going to use some new demonstrative on the other side in
7 your closing that goes along with the exchange, then we can
8 talk about that.

9 **MR. PORRITT:** Yeah. We expect those to be exchanged
10 this afternoon if it's going to be a new demonstrative.

11 **MR. SPIRO:** Yeah. I'm just explaining to the Court
12 that we did meet-and-confer. And so as to not overdo too many
13 things, if there's something new, we'd like to see it from each
14 other in terms of a demonstrative. I don't need to see the
15 transcript.

16 And other than that, we will see you, from our
17 perspective, Friday morning.

18 **THE COURT:** All right. And what's the official
19 timekeeper's --

20 **THE CLERK:** Well, I need the time for the video, the
21 division of it.

22 **MR. PORRITT:** I think we had, like, two and a half
23 minutes and the balance is roughly --

24 **MR. SPIRO:** We round up -- we round up in the Northern
25 District of California; right?

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1 **THE CLERK:** No. It's two minutes in.

2 **MR. KOTARSKI:** It's 17 and 2.

3 **MR. PORRITT:** 17 and 2, Defendants 17 and us 2.

4 **THE COURT:** I'm curious myself how much time you all
5 have.

6 **THE CLERK:** Not very much.

7 **THE COURT:** Good. It's going to make for a crisp,
8 succinct closing.

9 **MR. PORRITT:** I think I've got enough, if our
10 recordkeeping is correct. But, hopefully, now we'll find out.
11 I'm more nervous now than when the jury's coming back in.

12 (Brief pause.)

13 **THE CLERK:** Plaintiffs have used 17 hours and
14 12 minutes; Defendants 16 hours and 38 minutes.

15 **MR. PORRITT:** Does that include the 10 minutes we got
16 back that Your Honor was gracious enough to give us back?

17 **THE CLERK:** That-includes the 10 minutes.

18 **MR. PORRITT:** Okay.

19 **MR. SPIRO:** Right. And so during the summation when
20 I -- if I run up against the time and the Court tells me to sit
21 down, I'll know what that means.

22 **THE COURT:** I mean, you know, at this point --

23 **MR. PORRITT:** We're pretty close.

24 **THE COURT:** -- it's a few minutes. I'm not going
25 to -- if you guys only go a couple -- it's important enough,

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1 I'm not going to actually stop you mid-sentence. You get the
2 drift. You have about an hour.

3 **MR. PORRITT:** I've got about an hour. That's what I
4 mentally estimated.

5 **THE COURT:** You have about an hour and a half or hour
6 and 20, something like that.

7 You know, if it goes over a few minutes, I'm not going to
8 cut off the microphones; but we're not going to have, you know,
9 two hours and that kind of stuff.

10 **MR. PORRITT:** I didn't want to do that anyway,
11 Your Honor.

12 **THE COURT:** Okay.

13 **MR. PORRITT:** All right.

14 **MR. SPIRO:** Good. Thank you, Your Honor.

15 **MR. PORRITT:** Thank you, Your Honor.

16 **THE COURT:** Thank you.

17 (Proceedings adjourned at 1:46 p.m.)
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Debra L. Pas

Debra L. Pas, CSR 11916, CRR, RMR, RPR

Belle Ball

Belle Ball, CSR 8785, CRR, RDR

Wednesday, February 1, 2023